

18674-A  
REGISTRATION NO. FILED 1994

INTERSTATE COMMERCE COMMISSION

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TRUST INDENTURE AND SECURITY AGREEMENT  
(SPTC Trust No. 1994-1)

Dated as of January 15, 1994

Between

SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION,  
not in its individual capacity except  
as expressly provided herein but  
solely as Owner Trustee

And

STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,  
as Indenture Trustee

Re: Southern Pacific Transportation Company  
100 Maxi-Stack III Double Stack Container Cars

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**TRUST INDENTURE AND SECURITY AGREEMENT  
(SPTC Trust No. 1994-1)**

THIS TRUST INDENTURE AND SECURITY AGREEMENT (SPTC Trust No. 1994-1) dated as of January 15, 1994 (this "*Indenture*"), between SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity except as expressly provided herein but solely as Owner Trustee under the Trust Agreement (the "*Owner Trustee*"), and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee hereunder (the "*Indenture Trustee*");

**WITNESSETH:**

WHEREAS, the Owner Participant and the Owner Trustee in its individual capacity have entered into the Trust Agreement whereby, among other things, (i) the Owner Trustee establishes a certain trust for the use and benefit of the Owner Participant, subject, however, to the Indenture Estate created pursuant hereto for the use and benefit of, and with the priority of payment to, the holders of the Equipment Notes, and (ii) the Owner Trustee is authorized and directed to execute and deliver this Indenture;

WHEREAS, the Owner Trustee and the Indenture Trustee desire by this Indenture, among other things, (i) to provide for the issuance by the Owner Trustee of its 7.09% Equipment Notes due July 2, 2011 (the "*Equipment Notes*") in an aggregate principal amount of \$13,721,634.51, expressed to bear interest and to be payable in principal amounts as set forth in Exhibit A hereto and substantially in the form of Exhibit A hereto, and (ii) to provide for the assignment, mortgage and pledge by the Owner Trustee to the Indenture Trustee, as part of the Indenture Estate hereunder, among other things, of, and the grant of a security interest in, certain of the Owner Trustee's right, title and interest in and to the Equipment, the Lease, the Purchase Agreement Assignment, the Purchase Agreement and certain payments and other amounts received hereunder or thereunder, in accordance with the terms hereof, in trust, as security for, among other things, the Owner Trustee's obligations hereunder for the equal and ratable benefit of the holders of the Equipment Notes; and

WHEREAS, all things necessary to make this Indenture the legal, valid and binding obligation of the Owner Trustee and the Indenture Trustee, for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened.

**GRANTING CLAUSE**

NOW, THEREFORE, THIS TRUST INDENTURE AND SECURITY AGREEMENT WITNESSETH, that, to secure the prompt payment of the principal of and interest and premium, if any, on and all other amounts due with respect to, the Equipment Notes from time to time outstanding hereunder and the performance and observance by the Owner Trustee of all the agreements, covenants and provisions herein and in the Equipment Notes

all for the benefit of the holders of the Equipment Notes, and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance of the Equipment Notes by the Loan Participants, the Owner Trustee does hereby sell, assign, transfer, convey, mortgage, pledge, and confirm unto the Indenture Trustee, its successors and assigns, for the security and benefit of the holders of the Equipment Notes from time to time, a security interest in and mortgage lien on all right, title and interest of the Owner Trustee in and to the following described property, rights, interests and privileges insofar as it does not constitute Excepted Property (which collectively, including all property hereafter required to be subjected to the Lien of this Indenture by any instrument supplemental hereto, but excluding Excepted Property, being herein called the "*Indenture Estate*") and subject always to the Owner Trustee's and the Owner Participant's rights under Section 4.4 ("*Excepted Rights*"), to wit:

(1) the Lease, including, without limitation, all amounts of Advance, Basic Rent, Supplemental Rent, insurance proceeds and other payments of any kind for or with respect to the Equipment, subject to Lessee's rights under the Lease, including, without limitation, Lessee's right of quiet enjoyment;

(2) the Purchase Agreement, the Purchase Agreement Assignment and the Wheel Warranty Assignment;

(3) the Equipment and all replacements of any Units thereof and substitutions therefor in which the Owner Trustee shall from time to time acquire an interest under the Lease, all as more particularly described in each Indenture Supplement and Lease Supplement executed and delivered with respect to the Equipment or any such replacements thereof or substitutions therefor, as provided in this Indenture and the Lease;

(4) all requisition proceeds with respect to the Equipment or any Unit (to the extent of the Owner Trustee's interest therein pursuant to the terms of the Lease);

(5) all monies and securities now or hereafter paid or deposited or required to be paid or deposited with the Indenture Trustee pursuant to any term of this Indenture, the Lease or the Participation Agreement or required to be held by the Indenture Trustee hereunder or thereunder; and

(6) all proceeds of the foregoing.

Notwithstanding the foregoing provisions:

(a) there shall be excluded from the foregoing sale, assignment, transfer, conveyance, mortgage, pledge or security interest granted by this Indenture and from the Indenture Estate all Excepted Property and Excepted Rights; and

(b) the leasehold interest granted to the Lessee under the Lease shall not be subject to the security interest granted by this Indenture, and nothing in this Indenture

shall affect the rights of the Lessee under the Lease so long as no Lease Event of Default has occurred and is continuing.

TO HAVE AND TO HOLD all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the holders of the Equipment Notes from time to time, without any priority of any one Equipment Note over any other, and for the uses and purposes, and subject to the terms and provisions, set forth in this Indenture.

It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under each of the Operative Agreements to which it is a party to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee and the holders of the Equipment Notes shall have no obligation or liability under any of the Operative Agreements to which the Owner Trustee is a party by reason of or arising out of this assignment, nor shall the Indenture Trustee (unless the Indenture Trustee shall have become the "*Lessor*" under the Lease) or the holders of the Equipment Notes be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to any of the Operative Agreements to which the Owner Trustee is a party or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee does hereby constitute the Indenture Trustee the true and lawful attorney of the Owner Trustee, irrevocably, with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due to the Owner Trustee (other than Excepted Property), under or arising out of the Lease, or to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Indenture Trustee may deem to be necessary or advisable in the premises. The Owner Trustee has directed the Lessee to make all payments of Rent (other than Excepted Property) payable to the Owner Trustee by the Lessee and all other amounts which are required to be paid to or deposited with the Owner Trustee pursuant to the Lease (other than Excepted Property) directly to the Indenture Trustee at such address as the Indenture Trustee shall specify, for application as provided in this Indenture. The Owner Trustee agrees that, promptly on receipt thereof, it will transfer to the Indenture Trustee any and all moneys from time to time received by it constituting part of the Indenture Estate, for distribution by the Indenture Trustee pursuant to this Indenture, except that the Owner Trustee shall accept for distribution pursuant to the Trust Agreement any amounts distributed to it by the Indenture Trustee as expressly provided in this Indenture and any Excepted Property.

The Owner Trustee agrees that at any time and from time to time, upon the written request of the Indenture Trustee, the Owner Trustee will promptly and duly execute and deliver or cause to be executed and delivered any and all such further instruments and

documents as the Indenture Trustee may deem desirable in obtaining the full benefits of this assignment and of the rights and powers herein granted.

The Owner Trustee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as the assignment hereunder shall remain in effect, any of its right, title or interest hereby assigned, to anyone other than the Indenture Trustee, and that it will not (other than in respect of Excepted Property and Excepted Rights), except as provided in or permitted by this Indenture, accept any payment from the Lessee, enter into an agreement amending or supplementing the Lease, execute any waiver or modification of, or consent under the terms of the Lease, settle or compromise any claim (other than claims in respect of Excepted Property) against the Lessee arising under the Lease, submit or consent to the submission of any dispute, difference or other matter arising under or in respect of the Lease to arbitration thereunder or enter into any business or activity other than the business of owing and leasing the Equipment.

IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto as follows:

#### SECTION 1. DEFINITIONS.

Unless the context otherwise requires, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in Appendix A hereto for all purposes of this Indenture. All references to articles, sections, clauses, schedules and appendices in this Indenture are to articles, sections, clauses, schedules and appendices in and to this Indenture unless otherwise indicated.

#### SECTION 2. THE EQUIPMENT NOTES.

*Section 2.1. Terms of Equipment Notes.* There shall be issued and delivered to each Loan Participant on each Closing Date one or more of the Owner Trustee's 7.09% Equipment Notes due July 2, 2011, in an aggregate principal amount equal to the loan made by such Loan Participant to the Owner Trustee pursuant to Section 2 of the Participation Agreement on such Closing Date, which shall evidence the loan made by such Loan Participant in connection with the purchase of the Equipment by the Owner Trustee on such Closing Date, such Equipment Note to be substantially in the form set forth in Exhibit A hereto, duly authenticated by the Indenture Trustee and dated such Closing Date. The principal amount of and interest on each Equipment Note issued pursuant to the provisions of this Indenture shall be payable as set forth in the form thereof contained in Exhibit A hereto. Interest accrued on the Equipment Notes shall be computed on the basis of a 360-day year of twelve 30-day months on the principal amount thereof remaining unpaid from time to time from and including the date thereof to but excluding the date of payment. The aggregate principal amount of Equipment Notes which may be outstanding at any one time shall not exceed \$13,721,634.51. No Equipment Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless it shall have been authenticated by or on behalf of the Indenture Trustee.

*Section 2.2. Payment from Indenture Estate Only.* All payments to be made under the Equipment Notes and this Indenture shall be made only from the income and the proceeds from the Indenture Estate and only to the extent that the Indenture Trustee shall have received sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 hereof. Each holder of an Equipment Note, by its acceptance of such Equipment Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to such holder as herein provided and that none of the Owner Trustee, the Owner Participant, the Indenture Trustee or their permitted successors and assigns is or shall be personally liable to the holder of any Equipment Note for any amount payable under such Equipment Note or the Indenture or, except as expressly provided in the Participation Agreement or the Indenture, for any liability under the Participation Agreement or (in the case of the Owner Trustee or the Indenture Trustee) the Indenture.

*Section 2.3. Method of Payment.* (a) The principal of and premium, if any, and interest on each Equipment Note will be payable in U.S. dollars in immediately available funds at the principal corporate trust office of the Indenture Trustee or as otherwise directed in the manner provided herein. Notwithstanding the foregoing or any provision in any Equipment Note to the contrary, the Indenture Trustee will pay, or cause to be paid, if so requested by any holder of an Equipment Note by written notice to the Owner Trustee and the Indenture Trustee (and Section 10.16 of the Participation Agreement shall constitute such notice in the case of the original Loan Participants), all amounts payable by the Owner Trustee hereunder to such holder or a nominee therefor either (i) by transferring by wire in immediately available funds to an account maintained by such holder with a bank in the United States the amount to be distributed to such holder or (ii) by mailing a check denominated in U.S. dollars to such holder at such address as such holder shall have specified in such notice, in any case without any presentment or surrender of any Equipment Note except that the holder of an Equipment Note shall surrender such Equipment Note to the Indenture Trustee upon payment in full of the principal amount of and interest on such Equipment Note and such other sums payable to such holder hereunder or under the Equipment Note.

(b) Whenever the date scheduled for any payment to be made hereunder or under any Equipment Note shall not be a Business Day, then such payment need not be made on such scheduled date but may be made on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (provided such payment is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

*Section 2.4. Application of Payments to Principal Amount and Interest.* In the case of each Equipment Note, each payment of principal thereof and premium, if any, and interest thereon shall be applied, *first*, to the payment of accrued but unpaid interest on such Equipment Note then due thereunder, *second*, to the payment of the unpaid principal amount of such Equipment Note then due thereunder, *third*, to the payment of any premium then



due thereon and *fourth*, to the payment of the remaining outstanding principal amount of such Equipment Note; *provided*, that the Owner Trustee may only prepay such Equipment Note in accordance with the provisions of Sections 2.9, 3.2 and 3.3 hereof.

*Section 2.5. Termination of Interest in Indenture Estate.* A holder of an Equipment Note shall have no further interest in, or other right with respect to, the Indenture Estate when and if the principal amount of and interest on all Equipment Notes held by such holder and all other sums payable to such holder hereunder and under such Equipment Notes and under the Participation Agreement shall have been paid in full.

*Section 2.6. Transfer of Equipment Notes.* The Indenture Trustee shall maintain at its corporate trust office a register for the purpose of registering transfers and exchanges of Equipment Notes (the "*Register*"). A holder of an Equipment Note intending to transfer such Equipment Note to a new payee, or to exchange any Equipment Note or Equipment Notes held by it for an Equipment Note or Equipment Notes of a different denomination or denominations, may surrender such Equipment Note or Equipment Notes to the Indenture Trustee, together with a written request from such holder for the issuance of a new Equipment Note or Equipment Notes, specifying the denomination or denominations of the same, and, in the case of a transfer, the name and address of the transferee or transferees; *provided* that, except in the case of Equipment Notes issued in connection with an initial purchase or escrow disbursement pursuant to the Participation Agreement, no such Equipment Note may be issued in a denomination less than \$100,000 unless the outstanding principal balance of the Equipment Note being so surrendered is less than such amount, in which case the denomination of such Equipment Note shall be such outstanding principal balance. Promptly upon receipt of such documents, the Owner Trustee will issue, and the Indenture Trustee will authenticate and deliver, a new Equipment Note or Equipment Notes in the same aggregate principal amount and dated the same date or dates as, with the same payment schedule, in the form set forth in Exhibit A, in such denomination or denominations and payable to such payee or payees as shall be specified in the written request from such holder. All Equipment Notes issued upon any transfer or exchange of Equipment Notes shall be the valid obligations of the Owner Trustee evidencing the same respective obligations, and entitled to the same security and benefits under this Indenture, as the Equipment Notes surrendered. The Indenture Trustee shall make a notation on each new Equipment Note or Equipment Notes of the amount of all payments or prepayments of principal and interest previously made on the old Equipment Note or Equipment Notes with respect to which such new Equipment Note or Equipment Notes is or are issued. From time to time, the Indenture Trustee will provide the Owner Trustee and the Lessee with such information as either of them may request as to the registered holders of the Equipment Notes. The Owner Trustee shall not be required to exchange any surrendered Equipment Notes as above provided during the 10-day period preceding the due date of any payment on such Equipment Notes.

Prior to the due presentment for registration of transfer of an Equipment Note, the Owner Trustee and the Indenture Trustee may deem and treat the registered holder of such Equipment Note as the absolute owner and holder of such Equipment Note for the purpose

of receiving payment of all amounts payable with respect to such Equipment Note and for all other purposes and shall not be affected by any notice to the contrary.

The Indenture Trustee will promptly notify the Owner Trustee and the Lessee of each request for a registration of transfer of an Equipment Note. The Indenture Trustee will promptly cancel and destroy all Equipment Notes surrendered for transfer or exchange pursuant to this Section.

*Section 2.7. Mutilated, Destroyed, Lost or Stolen Equipment Notes.* If any Equipment Note shall become mutilated, destroyed, lost or stolen, the Owner Trustee shall, upon the written request of the holder of such Equipment Note, issue, and the Indenture Trustee shall authenticate and deliver in replacement thereof, a new Equipment Note in exchange and substitution for the mutilated Equipment Note, or in lieu of and in substitution for the Equipment Note so destroyed, lost or stolen. The Indenture Trustee shall make a notation on each new Equipment Note of the amount of all payments or prepayments of principal and interest theretofore made on the Equipment Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Equipment Note has been paid. If the Equipment Note being replaced has become mutilated, such Equipment Note shall be surrendered to the Indenture Trustee and forwarded to the Owner Trustee by the Indenture Trustee. If the Equipment Note being replaced has been destroyed, lost or stolen, the holder of such Equipment Note shall furnish to the Owner Trustee and the Indenture Trustee such security or indemnity as may be reasonably required by them to save the Owner Trustee and the Indenture Trustee harmless and evidence satisfactory to the Owner Trustee and the Indenture Trustee of the destruction, loss or theft of such Equipment Note and of the ownership thereof. If an original Loan Participant or its nominee is the owner of any mutilated, destroyed, lost or stolen Equipment Note, then the affidavit of its President, any Vice President (however denominated), Cashier, any Assistant Cashier, Treasurer, any Assistant Treasurer, Secretary or any Assistant Secretary in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee setting forth the fact of mutilation, destruction, loss or theft and such Loan Participant's (or nominee's) ownership of the Equipment Note at the time of such mutilation, destruction, loss or theft shall be accepted as satisfactory evidence thereof and no indemnity shall be required as a condition to execution and delivery of a new Equipment Note other than the written agreement of such Loan Participant in form reasonably satisfactory to the Owner Trustee and the Indenture Trustee, to indemnify the Owner Trustee and the Indenture Trustee from all risks resulting from the authentication and delivery of the substitute Equipment Note.

*Section 2.8. Payment of Transfer Taxes.* Upon the transfer of any Equipment Note or Equipment Notes pursuant to Section 2.6, the Owner Trustee or the Indenture Trustee may require from the party requesting such new Equipment Note or Equipment Notes payment of a sum to reimburse the Owner Trustee or the Indenture Trustee for, or to provide funds for the payment of, any tax or other governmental charge in connection therewith.

*Section 2.9. Prepayments.* (a) Each Equipment Note shall be prepaid in whole but not in part by the Owner Trustee on the Termination Date under Section 10 of the Lease

upon at least 30 days' prior notice from the Owner Trustee (or the Lessee on its behalf) to the Indenture Trustee in the event that the Lease is cancelled pursuant to Section 10 thereof, at a price equal to the principal amount of such Equipment Note outstanding plus accrued and unpaid interest thereon, plus, if the prepayment under this Section 2.9(a) occurs prior to July 2, 2005, a premium equal to the Make Whole Premium, and thereafter without the payment of any premium, plus any other amounts then due and owing the holder of such Equipment Note under the Operative Agreements.

(b) Each Equipment Note shall be prepaid in whole or in part by the Owner Trustee on the Determination Date determined pursuant to Section 11.2 of the Lease upon at least 30 days' prior notice from the Owner Trustee (or the Lessee on its behalf) to the Indenture Trustee in connection with the occurrence of an Event of Loss with respect to any Unit or Units if such Unit or Units are not replaced pursuant to Section 11.2(i) of the Lease, at a price equal to the sum of (i) as to principal thereof, an amount equal to the product obtained by multiplying the aggregate unpaid principal amount of such Equipment Note as at such prepayment date (after deducting therefrom the principal installment, if any, due on such date) by a fraction, the numerator of which shall be the Equipment Cost of such Unit or Units and the denominator of which shall be the aggregate Equipment Cost of all Units included in the Indenture Estate immediately prior to such prepayment date, and (ii) as to interest, the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (i) above to but not including the date of prepayment (after giving effect to the application of any Basic Rent paid on or prior to the date of such prepayment), plus any other amounts then due and owing to the holder of such Equipment Note under the Operative Agreements, but without the payment of any premium.

(c) Each Equipment Note shall be prepaid in whole but not in part by the Owner Trustee on the EBO date or the Refinancing Date, as the case may be, upon at least 30 days' prior notice from the Owner Trustee (or the Lessee on its behalf) to the Indenture Trustee in connection with (i) a purchase of the Equipment by the Lessee pursuant to Section 22.1(a) thereof (unless the Equipment Notes are assumed by the Lessee pursuant to Section 10.17 of the Participation Agreement), or (ii) a refinancing pursuant to Section 10.2 of the Participation Agreement, in each case at a price equal to the principal amount of such Equipment Note outstanding, plus accrued and unpaid interest thereon plus, a premium equal to the Make Whole Premium, if any, plus all other amounts due the holder of such Equipment Note under the Operative Agreements.

(d) The Indenture Trustee shall give prompt notice of any prepayment of any of the Equipment Notes to all holders of the Equipment Notes as soon as the Indenture Trustee shall have actual knowledge that such prepayment is to occur, which notice shall specify the principal amount of the Equipment Notes to be prepaid and the date of prepayment which date shall be not less than 25 days after the date of such notice.

*Section 2.10. Equally and Ratably Secured.* All Equipment Notes at any time outstanding under this Indenture shall be equally and ratably secured hereby without preference, priority or distinction on account of the date or dates or the actual time or times of the issue or maturity of such Equipment Notes so that all Equipment Notes at any time

issued and outstanding hereunder shall have the same rights, Liens and preferences under and by virtue of this Indenture.

*Section 2.11. Repurchase of Equipment Notes.* Neither the Owner Trustee nor the Owner Participant nor any Affiliate of either thereof, directly or indirectly, may repurchase or make any offer to repurchase any Equipment Notes unless the offer has been made to repurchase Equipment Notes, pro rata, from all holders of the Equipment Notes at the same time and upon the same terms. In case the Owner Trustee or the Owner Participant or the Lessee or any of their respective Affiliates purchases any Equipment Notes, such Equipment Notes shall remain outstanding solely for the purpose of permitting the holder thereof to collect and retain its pro rata share of the payments of principal, premium, if any, and interest accrued on the Equipment Notes but in no event shall such Equipment Notes be deemed to be outstanding for purposes of any determination or decision to be made by the holders of the Equipment Notes hereunder or under any of the other Operative Agreements or for purposes of any written direction of action to be taken by the Indenture Trustee hereunder or under any of the other Operative Agreements or for any other reason whatsoever other than for purposes of receiving payment in respect of the Equipment Notes as set forth above.

*Section 2.12. Taxes; Withholding.* The Indenture Trustee agrees, to the extent required by applicable law, to withhold from each payment due hereunder or under any Equipment Note, United States withholding taxes at the appropriate rate, and, on a timely basis, to deposit such amounts with an authorized depository and make such returns, filings and other reports in connection therewith, and in the manner, required under applicable law. The Indenture Trustee shall promptly furnish to each holder of an Equipment Note (a "Holder") (but in no event later than the date 30 days after the due date thereof) a U.S. Treasury Form 1042S and Form 8105-B (or similar forms as at any relevant time in effect), if applicable, indicating payment in full of any Taxes withheld from any payments by the Indenture Trustee to such Holder together with all such other information and documents reasonably requested by such Holder and necessary or appropriate to enable such Holder to substantiate a claim for credit or deduction with respect thereto for income tax purposes of the country where such Holder is located. If a Holder which is a Non-U.S. Person has furnished to the Indenture Trustee a properly completed and currently effective U.S. Treasury Form 1001 (or such successor Form or Forms as may be required by the United States Treasury Department) during the calendar year in which a payment hereunder or under the Equipment Note or Equipment Notes held by such Holder is made (but prior to the making of such payment), or in either of the two preceding calendar years, and has not notified the Indenture Trustee of the withdrawal or inaccuracy of such Form prior to the date of such payment, only the amount, if any, required by applicable law or treaty shall be withheld from such payment in respect of United States federal income tax. In the event that a Holder (x) is a Non-U.S. Person but has furnished to the Indenture Trustee a properly completed and currently effective (1) U.S. Treasury Form W-8 or a Form or Schedule that may be used in lieu thereof under applicable Treasury Regulations or (2) U.S. Treasury Form 4224 in duplicate, as the case may be (or such successor certificate or Form or Forms as may be required by the United States Treasury Department as necessary in order to avoid withholding of United States federal income tax), during the calendar year in which a

payment hereunder or under the Equipment Notes or Notes held by such Holder is made (but prior to the making of such payment), or (in the case of the certificate referred to in clause (1) above) in either of the two preceding calendar years, and has not notified the Indenture Trustee of the withdrawal or inaccuracy of such certificate or Form prior to the date of such payment, (y) is not a Non-U.S. Person who is not a Person described in Section 6049(a)(4) of the Code (an "Exempt Recipient") but has furnished to the Indenture Trustee a properly completed and currently effective U.S. Treasury Form W-9 prior to a payment hereunder or under the Equipment Notes held by such Holder or (z) is not a Non-U.S. Person but is an Exempt Recipient, then, in each case, no amount shall be withheld from such payment in respect of United States federal income tax. If any Holder has notified the Indenture Trustee that any of the foregoing Forms or certificates is withdrawn or inaccurate, or if any Holder has (A) notified the Indenture Trustee either that (i) it is not or has ceased to be an Exempt Recipient or (ii) it is not or has ceased to be a U.S. Person within the meaning of Section 7701(a)(30) of the Code and (B) failed to provide the forms and certificates appropriate to its status to the Indenture Trustee, or if the Internal Revenue Code or the regulations thereunder or the administrative interpretation thereof are at any time after the date hereof amended to require such withholding of United States federal income taxes from payments under the Equipment Notes held by such Holder, or if such withholding is otherwise required, the Indenture Trustee agrees to withhold from each payment due to the relevant Holder withholding taxes at the appropriate rate under applicable law, and will, as more fully provided above, on a timely basis, deposit such amounts with an authorized depository and make such returns, filings and other reports in connection therewith, and in the manner required under applicable law. In the event a payment under an Equipment Note is made to a Holder and the payment is subject to United States withholding taxes but the payor fails to withhold, the Holder shall return to such Person the amount of United States withholding taxes which should have been withheld by such Person under United States federal income tax laws governing withholding of tax on such payment.

### SECTION 3. RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM THE INDENTURE ESTATE.

*Section 3.1. Basic Rent Distribution.* Except as otherwise provided in Section 3.3, each installment of Interim Interest, Advance and Basic Rent as well as any installment of interest on overdue installments of Interim Interest, Advance and Basic Rent, and any other moneys paid over by the Lessee or the Owner Trustee to the Indenture Trustee for such purpose, shall be distributed by the Indenture Trustee as promptly as possible (it being understood that any payments of Basic Rent received by the Indenture Trustee on a timely basis and in accordance with the provisions of Section 3.6 of the Lease shall be distributed by 1:00 p.m. (New York City time) on the date received in the funds so received) in the following order of priority: *first*, so much of such installment as shall be required for the purpose shall be distributed and paid to the holders of the Equipment Notes to pay in full the aggregate amount of the payment or payments of principal, premium, if any, and interest (as well as any interest on overdue principal or interest) then due, such distribution to be made ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due with respect to each such Equipment Note bears to the

aggregate amount of payments then due under all such Equipment Notes; and *second*, the balance, if any, of such installment remaining thereafter shall be distributed to or as directed by the Owner Trustee for distribution or application in accordance with the terms of the Trust Agreement. The portion of each such installment distributed to a holder of an Equipment Note shall be applied by such holder in payment of such Equipment Note in accordance with the terms of Section 2.4.

*Section 3.2. Payments in the Event of Prepayment.* (a) Except as otherwise provided in Section 3.3 or 3.5, in the event of any prepayment of the Equipment Notes, in whole or in part, in accordance with the provisions of Section 2.9, any amount received by the Indenture Trustee shall in each case be distributed and paid in the following order of priority: *first*, so much of such amount as shall be required for the purpose of prepayment shall be distributed and paid to the holders of the Equipment Notes to pay the aggregate amount of the payment of principal, premium, if any, and interest to be prepaid on the Equipment Notes and other amounts due such holders pursuant to Section 2.9, such prepayment to be made ratably, without priority of one over any other, in the proportion that the amount to be prepaid on each such Equipment Note bears to the aggregate amount to be paid on all such Equipment Notes; and *second*, the balance, if any, of such amount remaining thereafter shall be distributed to or as directed by the Owner Trustee for distribution or application in accordance with the terms of the Trust Agreement.

(b) Except as otherwise provided in Section 3.3 or 3.5 hereof, any amounts received directly or through the Lessee from any Governmental Authority or other party pursuant to Section 11 of the Lease with respect to any Unit as the result of an Event of Loss, to the extent that such amounts are not at the time required to be paid to the Lessee pursuant to said Section 11, and any amounts of insurance proceeds for damage to the Indenture Estate received directly or through the Lessee from any insurer pursuant to Section 12 of the Lease with respect thereto as the result of an Event of Loss, to the extent such amounts are not at the time required to be paid to the Lessee pursuant to said Section 12, shall be applied as provided in clause (a) of this Section 3.2.

*Section 3.3. Payments after Indenture Event of Default.* (a) Except as provided in Section 3.5, all payments received and amounts realized by the Indenture Trustee after an Indenture Event of Default shall have occurred and be continuing and after the Indenture Trustee has declared (as assignee from the Owner Trustee of the Lease) the Lease to be in default pursuant to Section 15 thereof or has declared the Equipment Notes to be accelerated pursuant to Section 4.2, as the case may be, or has elected to foreclose or otherwise exercise any remedies under this Indenture (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to Section 15 of the Lease or Section 4), as well as all payments or amounts then held or thereafter received by the Indenture Trustee as part of the Indenture Estate while such Indenture Event of Default shall be continuing, shall be distributed by the Indenture Trustee in the following order of priority:

*First*, so much of such payments or amounts as shall be required to reimburse the Indenture Trustee for any fees which are due and payable for its services under this Indenture and any tax, expense (including reasonable attorney's fees), or other

cost or loss incurred by the Indenture Trustee (to the extent payable or reimbursable and not previously paid or reimbursed and to the extent incurred in connection with its duties as Indenture Trustee and whether or not the same shall be payable by the holders of the Equipment Notes, the Lessee or any other Person hereunder or under any other Operative Agreement) shall be distributed to the Indenture Trustee;

*Second*, so much of such payments or amounts as shall be required to reimburse the holders of the Equipment Notes for payments made by them to the Indenture Trustee pursuant to Section 5.2(f) (to the extent not previously reimbursed), and to pay such holders of the Equipment Notes the amounts payable to them pursuant to the provisions of the Participation Agreement, shall be distributed to such holders of the Equipment Notes, without priority of one over the other, in accordance with the amount of the payment or payments made by, or payable to, each such holder;

*Third*, so much of such payments or amounts remaining as shall be required to pay the principal of and accrued interest (to the date of distribution) on all Equipment Notes then due and payable, whether by declaration of acceleration pursuant to Section 4.2 or otherwise, and all other amounts due to the holders of the Equipment Notes under the Operative Agreements, and in case the aggregate amount so to be distributed shall be insufficient to pay in full the aforesaid amounts, then, ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all Equipment Notes held by each holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the aggregate unpaid principal amount of all Equipment Notes, plus the accrued but unpaid interest thereon to the date of distribution; and

*Fourth*, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to or as directed by the Owner Trustee for distribution or application in accordance with the terms of the Trust Agreement.

(b) Except as provided in Sections 3.3(a) and 3.5, if an Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall not make any distribution to the Owner Trustee but shall hold amounts otherwise distributable to the Owner Trustee as collateral security for the obligations secured hereby until the earliest to occur of (a) the first Business Day after such withholding has continued for a period of six months (provided the Indenture Trustee is not then stayed from exercising remedies in respect thereof), (b) the date on which such Indenture Event of Default shall have been cured or waived, and (c) the date acceleration occurs and such amounts are applied pursuant to Section 3.3(a).

*Section 3.4. Other Payments.* Except as otherwise provided in Section 3.3 or 3.5,

(a) any payments received by the Indenture Trustee for which no provision as to the application thereof is made in the Lease or the Participation Agreement or elsewhere in this Section 3, and

(b) all payments received and amounts realized by the Indenture Trustee under the Lease or otherwise with respect to the Equipment to the extent received or realized at any time after payment in full of the principal of and interest and premium, if any, on all Equipment Notes and all other amounts due the holders of the Equipment Notes under the Operative Agreements, as well as any other amounts remaining as part of the Indenture Estate after payment in full of the principal of and interest and premium, if any, on all Equipment Notes issued hereunder and all other amounts due the holders of the Equipment Notes under the Operative Agreements,

shall be distributed forthwith by the Indenture Trustee in the order of priority set forth in Section 3.3(a), except that in the case of any payment described in clause (b) above, such payment shall be distributed omitting clause "Third" of such Section 3.3(a).

Any payments received by the Indenture Trustee for which provision as to the application thereof is made in the Lease or the Participation Agreement but not elsewhere in this Indenture shall be applied to the purposes for which such payments were made in accordance with the provisions of the Lease or the Participation Agreement, as the case may be.

*Section 3.5. Distribution of Excepted Property.* All amounts constituting Excepted Property received by the Indenture Trustee shall be paid by the Indenture Trustee to the Person or Persons entitled thereto.

#### SECTION 4. DEFAULTS AND OTHER PROVISIONS.

*Section 4.1. Indenture Events of Default.* The following events shall constitute "Indenture Events of Default":

(a) subject to Section 4.4(a), a Lease Event of Default (other than in respect of Excepted Property); or

(b) default by the Owner Trustee in making any payment when due of principal of, premium, if any, or interest on, any Equipment Note or Equipment Notes within five Business Days after the due date thereof; or

(c) default by the Owner Trustee in making any other payment due hereunder to the holders of the Equipment Notes and such default shall continue for 10 Business Days after notice thereof from the Indenture Trustee or any initial Loan Participant to the Owner Trustee; or



(d) default shall be made in the observance or performance of any other of the covenants and agreements on the part of the Owner Trustee or the Owner Participant contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Indenture Trustee or any initial Loan Participant to the Owner Trustee and the Owner Participant, specifying the default and demanding the same to be remedied; *provided* that if such default is capable of being remedied and such remedy does not involve the payment of money alone and such default cannot be cured by diligent efforts within such 30 day period, no such default shall constitute an Indenture Event of Default hereunder so long as the Owner Trustee or the Owner Participant is diligently proceeding to remedy such default, and so long as failure to remedy such default will not result in the sale, forfeiture or loss of any Unit, but in no event shall such additional period exceed 180 days; or

(e) any representation or warranty made by the Owner Trustee or the Owner Participant under the Participation Agreement, or by the Owner Trustee hereunder, or by any representative of the Owner Trustee or the Owner Participant in any document or certificate furnished to the Indenture Trustee or any Loan Participant in connection herewith or therewith or pursuant hereto or thereto, shall be untrue or incorrect in any material respect as of the date made and shall remain material and continue unremedied for a period of 30 days after written notice thereof from the Indenture Trustee or any initial Loan Participant to the Owner Trustee and the Owner Participant; *provided* that if such misrepresentation is curable but is not capable of cure within such 30 day period, then such misrepresentation shall not constitute an Indenture Event of Default so long as the Owner Trustee or the Owner Participant is diligently proceeding to remedy such misrepresentation and so long as failure to cure such misrepresentation will not result in the sale, forfeiture or loss of any Unit, but in no event shall such additional period exceed 90 days; or

(f) the Owner Trustee or the Owner Participant (i) shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) shall consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) shall make a general assignment for the benefit of creditors, or (iv) shall admit in writing its inability to pay its debts as they become due, or (v) shall take any corporate action to authorize any of the foregoing; or

(g) an involuntary case or other proceeding shall be commenced against the Owner Trustee, the Owner Participant or the Trust Estate seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any

substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days.

*Section 4.2. Acceleration; Rescission and Annulment.* If an Indenture Event of Default occurs and is continuing, the Indenture Trustee, upon the direction of the holders of at least 25% of the principal amount of the Equipment Notes outstanding shall, subject to Section 4.4, declare the unpaid principal amount of all Equipment Notes then outstanding and accrued interest thereon to be due and payable. At any time after the Indenture Trustee has declared the unpaid principal amount of all Equipment Notes then outstanding to be due and payable in accordance with this Section 4.2, and prior to the sale of any of the Indenture Estate pursuant to this Section 4, the holders of 66-2/3% of the principal amount of the Equipment Notes outstanding, by written notice to the Owner Trustee, the Lessee and the Indenture Trustee, may rescind and annul such declaration and thereby annul its consequences if: (i) there has been paid to or deposited with the Indenture Trustee an amount sufficient to pay all overdue installments of interest on the Equipment Notes, and the principal of any Equipment Notes that have become due otherwise than by such declaration of acceleration, (ii) the rescission would not conflict with any judgment or decree, and (iii) all other Indenture Defaults and Indenture Events of Default, other than nonpayment of principal or interest on the Equipment Notes that have become due solely because of such acceleration, have been cured or waived.

*Section 4.3. Remedies with Respect to Indenture Estate.* (a) After an Indenture Event of Default shall have occurred and so long as such Indenture Event of Default shall be continuing, then and in every such case the Indenture Trustee, as assignee hereunder of the Lease or as mortgagee hereunder of the Equipment or otherwise, when required pursuant to the provisions of Section 5 hereof, shall, subject to Sections 4.4 and 4.5, exercise any or all of the rights and powers and pursue any and all of the remedies that it is directed to exercise or pursue by the holders of 66-2/3% of the principal amount of the Equipment Notes outstanding pursuant to Section 15 of the Lease and this Section 4 and may recover judgment in its own name as Indenture Trustee against the Indenture Estate and may take possession of all or any part of the Indenture Estate, and may exclude the Owner Trustee and the Owner Participant and all persons claiming under any of them wholly or partly therefrom, in each case as so directed by such holders.

(b) Subject to Section 4.4 and Section 4.5, the Indenture Trustee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered mail to the Owner Trustee, the Owner Participant and the Lessee once at least 15 days prior to the date of such sale or the date on which the Indenture Trustee enters into a binding contract for a private sale, and any other notice which may be required by law, sell and dispose of the Indenture Estate, or any part thereof, or interest therein, at public auction to the highest bidder or at private sale in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Indenture Trustee may determine, and at any place (whether or not it be the location of the Indenture Estate or any part thereof) and time designated in the notice above referred to; *provided, however,*

that, notwithstanding any provision herein to the contrary, the Indenture Trustee shall not sell any of the Indenture Estate unless a declaration of acceleration has been made pursuant to Section 4.2. Any such public sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice, and the Indenture Trustee or the holder or holders of any Equipment Notes, or any interest therein, may bid and become the purchaser at any such public sale. The Indenture Trustee may exercise such right without possession or production of the Equipment Notes or proof of ownership thereof, and as representative of the holders may exercise such right without including the holders as parties to any suit or proceeding relating to foreclosure of any property in the Indenture Estate. The Owner Trustee hereby irrevocably constitutes the Indenture Trustee the true and lawful attorney-in-fact of the Owner Trustee (in the name of the Owner Trustee or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery for enforcement of the Lien of this Indenture, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Indenture Trustee may consider necessary or appropriate, with full power of substitution, the Owner Trustee hereby ratifying and confirming all that such attorney or any substitute shall lawfully do by virtue hereof. Nevertheless, if so requested by the Indenture Trustee or any purchaser, the Owner Trustee shall ratify and confirm any such sale, assignment, transfer or delivery, by executing and delivering to the Indenture Trustee or such purchaser all bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

(c) Subject to Section 4.4 and Section 4.5, the Owner Trustee agrees, to the fullest extent that it lawfully may, that, in case one or more of the Indenture Events of Default shall have occurred and be continuing, then, in every such case, the Indenture Trustee may take possession of all or any part of the Indenture Estate and may exclude the Owner Trustee and the Owner Participant and all persons claiming under any of them wholly or partly therefrom. At the request of the Indenture Trustee, the Owner Trustee shall promptly execute and deliver to the Indenture Trustee such instruments of title and other documents as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or an agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indenture Estate. If the Owner Trustee shall fail for any reason to execute and deliver such instruments and documents to the Indenture Trustee, the Indenture Trustee may pursue all or part of the Indenture Estate wherever it may be found and may enter any of the premises of the Lessee wherever the Indenture Estate may be or be supposed to be and search for the Indenture Estate and, subject to Section 4.5, take possession of and remove the Indenture Estate. Upon every such taking of possession, the Indenture Trustee may, from time to time, at the expense of the Indenture Estate, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to any of the Indenture Estate, as it may deem proper. In each such case, the Indenture Trustee shall have the right to use, operate, store, control or manage the Indenture Estate, and to carry on the business and to exercise all rights and powers of the Owner Trustee relating to the Indenture Estate, as the Indenture Trustee shall deem best, including the right to enter into any and all such agreements with respect to the maintenance, operation, leasing or

storage of the Indenture Estate or any part thereof as the Indenture Trustee may determine; and the Indenture Trustee shall be entitled to collect and receive all tolls, rents, revenues, issues, income, products and profits of the Indenture Estate and every part thereof, without prejudice, however, to the right of the Indenture Trustee under any provision of this Indenture to collect and receive all cash held by, or required to be deposited with, the Indenture Trustee hereunder. Such tolls, rents, revenues, issues, income, products and profits shall be applied to pay the expenses of holding and operating the Indenture Estate and of conducting the business thereof, and of all maintenance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Indenture Estate), and all other payments which the Indenture Trustee may be required or authorized to make under any provision of this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee, and of all persons properly engaged and employed by the Indenture Trustee, including the reasonable expenses of the Indenture Trustee.

(d) If an Indenture Event of Default occurs and is continuing and the Indenture Trustee shall have obtained possession of a Unit, the Indenture Trustee shall not be obligated to use or operate such Unit or cause such Unit to be used or operated directly or indirectly by itself or through agents or other representatives or to lease, license or otherwise permit or provide for the use or operation of such Unit by any other Person unless (i) the Indenture Trustee shall have been able to obtain insurance in kinds, at rates and in amounts satisfactory to it in its discretion to protect the Indenture Estate and the Indenture Trustee, as trustee and individually, against any and all liability for loss or damage to such Unit and for public liability and property damage resulting from use or operation of such Unit and (ii) funds are available in the Indenture Estate to pay for all such insurance or, in lieu of such insurance, the Indenture Trustee is furnished with indemnification from the holders of the Equipment Notes or any other Person upon terms and in amounts satisfactory to the Indenture Trustee in its discretion to protect the Indenture Estate and the Indenture Trustee, as trustee and individually, against any and all such liabilities.

*Section 4.4. Certain Rights of the Owner Participant and the Owner Trustee.*

(a) *Right to Cure.* (A) If the Lessee shall fail to make any payment of Basic Rent within five Business Days after the same shall become due, then as long as no Indenture Event of Default (other than an Indenture Event of Default arising from such failure to pay Basic Rent or any other Lease Event of Default) shall have occurred and be continuing, the Owner Participant or the Owner Trustee may (but need not) pay to the Indenture Trustee, at any time prior to the expiration of a period of 10 Business Days (a "10-Day Period") after receiving written notice of such Lease Event of Default from the Indenture Trustee (prior to the expiration of which 10-Day Period the Indenture Trustee shall not declare the Lease in default pursuant to Section 15 thereof or exercise any of the rights, powers or remedies pursuant to such Section 15 or this Section 4), an amount equal to the full amount of such payment of Basic Rent, together with any interest at the Late Rate due thereon on account of

the delayed payment thereof, and such payment by the Owner Participant or the Owner Trustee shall be deemed to cure any Indenture Event of Default which arose from such failure of the Lessee (but such cure shall not relieve the Lessee of any of its obligations); and (B) if there shall occur a Lease Event of Default in respect of any other payment of Rent or any other Lease Event of Default shall have occurred and be continuing which is curable by the payment of money (it being understood that items such as the obtaining of insurance or the procurement of maintenance services can be so effected), then as long as no Indenture Event of Default (other than an Indenture Event of Default arising from such Lease Event of Default or any other Lease Event of Default) shall have occurred and be continuing, the Owner Participant or the Owner Trustee may (but need not) pay to the Indenture Trustee, at any time prior to the expiration of a period of 30 days (a "*30-Day Period*") after receiving written notice of such Lease Event of Default from the Indenture Trustee (prior to the expiration of which 30-Day Period the Indenture Trustee shall not declare the Lease in default pursuant to Section 15 thereof or exercise any of the rights, powers or remedies pursuant to such Section 15 or this Section 4), an amount equal to the full amount of such payment of Rent, together with any interest due thereon on account of the delayed payment thereof, or otherwise make such payment as shall effect such cure, and such payment by the Owner Participant or the Owner Trustee shall be deemed to cure any Indenture Event of Default which arose from such Lease Event of Default (but such cure shall not relieve the Lessee of any of its obligations); *provided however*, Owner Participant and Owner Trustee, collectively, shall not be entitled to (x) cure more than three consecutive or six total defaults in the payment of Basic Rent, or (y) cure other Lease Events of Default if the unreimbursed amounts exceed in the aggregate \$4,000,000. Upon any cure by the Owner Participant or the Owner Trustee in accordance with the first sentence of this Section 4.4(a), the Owner Participant or the Owner Trustee shall, to the extent of their respective payments, be subrogated to the rights of the Indenture Trustee, as assignee hereunder of the Owner Trustee to receive such payment of Rent (and any interest due thereon on account of the delayed payment thereof) or right of reimbursement, and shall be entitled to receive such payment upon its receipt by the Indenture Trustee as aforesaid (but in each case only if all amounts of principal and interest at the time due and payable on the Equipment Notes shall have been paid in full); *provided* that neither the Owner Participant nor the Owner Trustee shall attempt to recover any such amount paid by it on behalf of the Lessee pursuant to this Section 4.4(a) except by demanding of the Lessee payment of such amount or by commencing an action against the Lessee to require the payment of such amount.

(b) *Option to Purchase Equipment Notes.* In the event that (i) at any time one or more Lease Events of Default shall have occurred and any such Lease Events of Default shall have continued for a period of 180 days or more during which time the Indenture Trustee has taken no action to accelerate the Equipment Notes or cancel the Lease or repossess the Equipment with respect thereto, or (ii) the Equipment Notes shall have been accelerated pursuant to Section 4.2 or the Indenture Trustee has taken action to cancel the Lease or repossess the Equipment or exercise any other substantial remedy in respect of the Indenture Estate, then and in any such case, so long as no Indenture Event of Default not due to a Lease Event of Default or not attributable to the Owner Trustee in its individual capacity shall have occurred and be continuing and upon 30 days' notice from the Owner Trustee to the Indenture Trustee designating a date of purchase (the "*Purchase Date*"), each

holder of an Equipment Note agrees that it will, upon and subject to receipt by the Indenture Trustee from the Owner Trustee or its nominee of an amount equal to the aggregate unpaid principal amount of all Equipment Notes, together with accrued interest thereon to the Purchase Date, plus all other sums then due and payable to such holder of an Equipment Note under the Operative Agreements, plus, in the case of (i) above and prior to 180 days after such Lease Events of Default have occurred, the Make Whole Premium, if any, and thereafter or in the case of (ii) above, without any Make Whole Premium or other premium, forthwith sell, assign, transfer and convey to the Owner Trustee or its nominee on the Purchase Date all of the right, title and interest of such holder in and to the Equipment Notes then held by such holder, and the Owner Trustee or its nominee shall assume all of such holder's obligations under the Participation Agreement. From the date of receipt of such notice until the Purchase Date, the Indenture Trustee shall not exercise any remedies under Section 4.3 or otherwise in respect of this Indenture (or, if the Indenture Trustee has commenced the exercise of such remedies the Indenture Trustee shall stay the exercise of such remedies). If the Owner Participant shall so request, such holder of an Equipment Note will comply with all the provisions of Section 2.6 to enable new Equipment Notes to be issued to the Owner Participant in such authorized denominations (as provided in Section 2.6) as Owner Participant shall request. All charges and expenses required pursuant to Section 2.8 in connection with the issuance of any such new Equipment Note pursuant to this Section shall be borne by the Owner Participant.

(c) *Limits on Foreclosure.* Notwithstanding any provision of this Indenture to the contrary, the Indenture Trustee shall not foreclose the Lien of this Indenture or otherwise exercise remedies hereunder which would result in the exclusion of the Owner Trustee from the Indenture Estate or any part thereof as a result of an Indenture Event of Default that constitutes or occurs solely by virtue of one or more Lease Events of Default (at a time when no other Indenture Event of Default unrelated to any Lease Event of Default shall have occurred and be continuing) unless the Indenture Trustee as security assignee of the Owner Trustee has proceeded or is then currently proceeding, in a diligent manner, to the extent it is then entitled to do so hereunder and under the Lease and is not then stayed or otherwise prevented from doing so by operation of law or otherwise, to cancel the Lease or exercise one (or more, as it shall in its good faith discretion determine) of the significant remedies provided for in Section 15 of the Lease for the purpose of recovering possession of the Equipment; *provided* that if the Indenture Trustee is stayed or prevented from exercising its remedies under the Lease by operation of law or otherwise, the Indenture Trustee will not foreclose the Lien of this Indenture or otherwise exercise remedies hereunder which would result in the exclusion of the Owner Trustee from the Indenture Estate or any part thereof until after a period of 60 days (or such longer period as may be provided for with respect to the Equipment in accordance with Section 1168 of the Bankruptcy Code), and after such period, the Indenture Trustee may foreclose the Lien of this Indenture or exercise other remedies hereunder.

(d) *Shared Rights.* Notwithstanding any other provision of this Indenture including the Granting Clause, (i) The Owner Trustee and the Owner Participant shall at all times retain the right, to the exclusion of the Indenture Trustee, (A) to Excepted Property and to commence an action at law to obtain such Excepted Property and (B) to adjust Basic Rent,

Stipulated Loss Value, Termination Value and EBO Amount as provided in Section 2.6 of the Participation Agreement, subject always to the limitations on such adjustments set forth in Section 2.6(c) thereof;

(ii) The Owner Trustee and the Indenture Trustee shall each retain the right to (A) receive from Lessee all notices, certificates, reports, filings, opinions of counsel, copies of all documents and all information which the Lessee is permitted or required to give or furnish to the "Lessor" pursuant to the Lease or to the Owner Trustee pursuant to any other Operative Agreement, (B) to exercise the inspection rights provided for in Section 13.2 of the Lease, (C) to cause the Lessee to take any action and execute and deliver such documents and assurances as the "Lessor" may from time to time request pursuant to Section 16.2 of the Lease, and (D) to exercise the rights provided for in Section 12.3 and 17 of the Lease;

(iii) The Owner Trustee and the Indenture Trustee shall each retain the right, acting jointly, to exercise the rights, elections and options of the Owner Trustee as Lessor under the Lease to make any decision or determination, to consent to any amendment, supplement or modification and to give any notice, consent, waiver or approval; *provided* that the Indenture Trustee shall retain the independent right to give notice of default under the Lease and the exclusive right to cancel the Lease and, except as otherwise provided in Excepted Rights and in this Section 4.4, to exercise or enforce remedies under the Lease upon the occurrence of a Lease Event of Default;

(iv) At all times, the Owner Trustee shall have the non-exclusive right, as Lessor, to seek specific performance of the covenants of the Lessee under the Lease providing for the payment of Basic Rent and Supplemental Rent as well as covenants relating to the protection (including the removal of Liens that are not Permitted Liens), insurance, maintenance, condition, alterations, modifications and additions, inspection, use, sublease and operation of the Equipment.

*Section 4.5. Rights of Lessee.* Notwithstanding the provisions of this Indenture, including, without limitation, Section 4.3, so long as no Lease Event of Default shall have occurred and be continuing, neither the Indenture Trustee nor the Owner Trustee shall take any action contrary to, or disturb, the Lessee's rights under the Lease, except in accordance with the provisions of the Lease, including, without limitation, the Lessee's rights to possession and use of, and of quiet enjoyment of, the Equipment.

*Section 4.6. Waiver of Existing Defaults.* The holders of 66-2/3% of the principal amount of the Equipment Notes outstanding by notice to the Indenture Trustee on behalf of all holders of the Equipment Notes may waive any past default hereunder and its consequences, except a default: (i) in the payment of the principal of, premium, if any, or interest on any Equipment Note, or (ii) in respect of a covenant or provision hereof which under Section 8 hereof cannot be modified or amended without the consent of the holder of each Equipment Note affected. Upon any such waiver, such default shall cease to exist, and any Indenture Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

*Section 4.7. Remedies Cumulative.* Each and every right, power and remedy herein specifically given to the Indenture Trustee or otherwise in this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Trustee or the Lessee or to be an acquiescence therein.

*Section 4.8. Discontinuance of Proceedings.* In case the Indenture Trustee shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee, then and in every such case the Owner Trustee, the Owner Participant, the Indenture Trustee and the Lessee shall be restored to their former positions and rights hereunder with respect to the Indenture Estate, and all rights, remedies and powers of the Indenture Trustee shall continue as if no such proceedings had been undertaken (but otherwise without prejudice). Without limiting the generality of the foregoing, if all such proceedings shall have been so discontinued or abandoned and no Indenture Event of Default shall then have occurred and be continuing hereunder, any acceleration of the Equipment Notes pursuant to Section 4.2 hereof shall be deemed to be rescinded and annulled.

*Section 4.9. Acceleration Clause.* In case of any sale of the Indenture Estate or any part thereof pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Indenture, the principal of the Equipment Notes, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable; also, in the case of any such sale, the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Equipment Notes held by such purchaser and any claims for interest matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Equipment Notes held by such purchaser, including principal and interest thereof, out of the net proceeds of such sale.

#### SECTION 5. THE INDENTURE TRUSTEE.

The Indenture Trustee accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Owner Trustee and the respective holders of the Equipment Notes at any time outstanding by their acceptance thereof agree:

*Section 5.1. Duties of Indenture Trustee.* (a) In the event the Indenture Trustee shall have knowledge of a Lease Default or Lease Event of Default, or an Indenture Default or



Indenture Event of Default, the Indenture Trustee shall give prompt notice thereof to the Lessee, the Owner Trustee, the Owner Participant and the Loan Participants by telegram, facsimile, or telephone (to be promptly confirmed in writing). In the event the Owner Trustee shall have knowledge of a Lease Default or Lease Event of Default, or an Indenture Default or Indenture Event of Default, the Owner Trustee shall give prompt notice thereof in the same manner to the Lessee, the Indenture Trustee, the Owner Participant and the Loan Participants.

(b) The Indenture Trustee undertakes (i) except while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to perform such duties and only such duties as are specifically set forth in this Indenture and the other Operative Agreements, and (ii) while an Indenture Event of Default actually known to the Indenture Trustee shall have occurred and be continuing, to exercise such of the rights and powers as are vested in it by this Indenture and to use the same degree of care and skill in their exercise as an ordinary prudent person would exercise in the conduct of his or her own affairs.

(c) The Indenture Trustee upon receipt of instruments furnished to the Indenture Trustee pursuant to the provisions of this Indenture, shall examine the same to determine whether or not such instruments conform to the requirements of this Indenture, but need not make an independent verification of the facts or matters set forth therein.

*Section 5.2. Indenture Trustee's Liability.* No provision of this Indenture shall be construed to relieve the Indenture Trustee from liability for its own negligent action, negligent failure to act, or its own wilful misconduct, except that:

(a) the Indenture Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Indenture Trustee but the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of this Indenture;

(b) in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may conclusively rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon, any resolution, Officer's Certificate, opinion of counsel, Equipment Note, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report, stock certificate, or other paper or document reasonably believed by the Indenture Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties;

(c) in the absence of bad faith on the part of the Indenture Trustee, whenever the Indenture Trustee shall consider it necessary or desirable that any matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officer's Certificate;

*provided, however*, that the Indenture Trustee may require such further and additional evidence and make such further investigation as it may consider reasonable;

(d) the Indenture Trustee shall not be liable for any error of judgment made in good faith by an officer of the Indenture Trustee unless it shall be proved that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(e) the Indenture Trustee shall not be deemed to have knowledge of any Lease Default or Lease Event of Default or Indenture Default or Indenture Event of Default unless and until an officer of the corporate trust department of the Indenture Trustee shall have actual knowledge thereof or the Indenture Trustee shall have received written advice thereof from the holder of any Equipment Note;

(f) whether or not an Indenture Event of Default shall have occurred, the Indenture Trustee shall not be under any obligation to exercise any of the powers vested in it by this Indenture or take any action under this Indenture which may tend to involve it in any expense or liability, the payment of which within a reasonable time is not, in its reasonable opinion, assured to it by the security afforded to it by the terms of this Indenture, unless and until it is requested in writing so to do by one or more holders of Equipment Notes outstanding hereunder and furnished, from time to time as it may require, with security and indemnity reasonably satisfactory to the Indenture Trustee against the costs, expenses and liabilities which might be incurred therein or thereby; *provided, however*, that in the case of a Loan Participant, the written indemnity of such Loan Participant shall be sufficient without requiring any additional security;

(g) whether or not an Indenture Event of Default shall have occurred, whenever it is provided in this Indenture that the Indenture Trustee consent to any act or omission by any Person or that the Indenture Trustee exercise its discretion in any manner, the Indenture Trustee may (but need not) seek the written direction of the holders of at least 66-2/3% in principal amount of the Equipment Notes outstanding (and shall be duly protected in relying thereon) and, unless written evidence of such direction has been received by the Indenture Trustee, it shall be fully justified in refusing so to consent or so to exercise its discretion; *provided, however*, that holders of 66-2/3% in principal amount of the Equipment Notes outstanding shall have the right to determine which of the remedies herein set forth shall be adopted and to direct the time, method and place of conducting all proceedings to be taken under the provisions of this Indenture for the enforcement thereof or of the Equipment Notes; *provided, however*, that the Indenture Trustee shall have the right to decline to follow any such direction if the Indenture Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be unjustly prejudicial to the holders of Equipment Notes not parties to such direction and the Indenture Trustee shall not incur any liability hereunder for so following such advice;

(h) the Indenture Trustee may consult with counsel and the written advice of such counsel shall be full and complete authorization and protection in respect of any

action taken, suffered or omitted to be taken by it hereunder in good faith reliance thereon and in strict conformity therewith;

(i) the Indenture Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, or by or through co-trustees or separate trustees; *provided* that the Indenture Trustee shall use due care in appointing the same, and the Indenture Trustee shall not be responsible for any misconduct or negligence on the part of any agents or attorneys or any co-trustee or separate trustee, so long as such co-trustee or separate trustee shall have agreed for the benefit of the holders of the Equipment Notes to comply with the standard of care provided herein for the Indenture Trustee. The Indenture Trustee may in all cases pay reasonable compensation to all such attorneys, agents, co-trustees or separate trustees, as may be engaged in connection with the trusts hereof and will be paid by the Lessee on demand for the costs thereof;

(j) the Indenture Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture and the instructions conforming to the requirements of this Indenture; and

(k) the Indenture Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of the applicable percentage of principal amount of the Equipment Notes outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred upon the Indenture Trustee, under this Indenture.

*Section 5.3. No Responsibility of Indenture Trustee for Recitals, Etc.* (a) The recitals and statements contained herein and in the Equipment Notes (except for the Indenture Trustee's certificate of authentication endorsed on the Equipment Notes) shall be taken as the recitals and statements of the Owner Trustee, and the Indenture Trustee assumes no responsibility for the correctness of the same, nor shall the Indenture Trustee have any responsibility for or any liability with respect to any disclosure, warranty, representation or concealment or failure to disclose in connection with the offering, solicitation, sale or distribution of the Equipment Notes by the Owner Trustee or by any other Person.

(b) The Indenture Trustee makes no representation as to the validity or sufficiency of this Indenture, or of the Equipment Notes secured hereby, the security hereby or thereby afforded, the title of the Owner Trustee to the Equipment or the descriptions thereof, or the value of any such collateral, or the filing or recording or registering of this Indenture or any other document.

(c) The Indenture Trustee shall not be concerned with or accountable to any Person for the use or application of any deposited moneys which shall be released or withdrawn in accordance with the provisions of this Indenture or of any property or Securities or the

proceeds thereof which shall be released from the lien hereof in accordance with the provisions of this Indenture.

*Section 5.4. Status of Moneys Received.* (a) All moneys received by the Indenture Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but (except as herein otherwise provided with respect to the funds referred to in paragraph (b) of this Section) need not be segregated in any manner from any other moneys or funds, except to the extent required by mandatory provisions of law, and may be deposited by the Indenture Trustee under such general conditions as may be prescribed by law, and neither the Indenture Trustee nor any agent of the Indenture Trustee shall be under any liability for interest on any moneys received by it hereunder. The Indenture Trustee or any agent of the Indenture Trustee, in its individual or any other capacity, may become the owner of any Equipment Note and be interested in any financial transaction with the Owner Trustee or any affiliated corporation, or the Indenture Trustee or such agent may act as depositary or otherwise in respect to other Securities of the Owner Trustee or any affiliated corporation, all with the same rights which it would have if it were not the Indenture Trustee or such agent.

(b) The Indenture Trustee shall invest and reinvest any funds from time to time held by the Indenture Trustee in such Permitted Investments as are directed by the Lessee; *provided* that if a Material Default or Lease Event of Default shall have occurred and be continuing, such funds shall be invested in Permitted Investments described in clauses (i) and (ii) of the definition thereof. Upon any sale or payment of any investment, the proceeds thereof, plus any interest received by the Indenture Trustee thereon shall be held by the Indenture Trustee as part of the fund from which such investment was made for application as a part of such fund.

**SECTION 6. CERTAIN LIMITATIONS ON OWNER TRUSTEE'S AND INDENTURE TRUSTEE'S RIGHTS.**

Each of the Owner Trustee and the Indenture Trustee agree that it shall have no right against the holders of the Equipment Notes or the Indenture Estate (except in the case of the Indenture Trustee as expressly provided in Section 3.3 and 5.2(f) hereof) for any fee as compensation for its services hereunder or any expenses or disbursements incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liability which it may incur in the exercise and performance of such powers and duties but, on the contrary, shall look solely to the Lessee for such payment and indemnification and that neither the Owner Trustee nor the Indenture Trustee shall have any lien on nor security interest in the Indenture Estate as security for such compensation, expenses, reasonable counsel fees, if any, disbursements and indemnification.

SECTION 7. RESIGNATION OR REMOVAL OF INDENTURE TRUSTEE; APPOINTMENT OF SUCCESSOR.

(a) The resignation or removal of the Indenture Trustee and the appointment of a successor Indenture Trustee shall become effective only upon the successor Indenture Trustee's acceptance of appointment as provided in this Section 7. The Indenture Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Owner Trustee, the Owner Participant, the Lessee and the holders of the Equipment Notes. The holders of 66-2/3% in principal amount of the Equipment Notes outstanding may at any time remove the Indenture Trustee without cause by an instrument in writing delivered to the Owner Trustee, the Owner Participant, the Lessee and the Indenture Trustee.

(b) In the case of the resignation or removal of the Indenture Trustee, until a successor Indenture Trustee shall be appointed by the holders of 66-2/3% in aggregate principal amount of the Equipment Notes outstanding, the Owner Trustee may appoint a successor Indenture Trustee or if a successor Indenture Trustee shall not have been appointed and accepted its appointment hereunder within 60 days after the Indenture Trustee gives notice of resignation or is removed as provided above, the retiring Indenture Trustee, the Lessee, the Owner Trustee or any holder of a Equipment Note may petition any court of competent jurisdiction for the appointment of a successor Indenture Trustee. Any successor Indenture Trustee so appointed shall immediately and without further act be superseded by any successor Indenture Trustee appointed by the holders of 66-2/3% in aggregate principal amount of the Equipment Notes outstanding.

(c) Any successor Indenture Trustee, however appointed, shall execute and deliver to the Owner Trustee and the Lessee and to the predecessor Indenture Trustee an instrument accepting such appointment, and thereupon such successor Indenture Trustee, without further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Indenture Trustee herein; but nevertheless, upon the written request of such successor Indenture Trustee, such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights, powers and trusts of such predecessor Indenture Trustee, and such predecessor Indenture Trustee shall duly assign, transfer, deliver and pay over to such successor Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder.

(d) The Indenture Trustee shall be a bank or trust company organized under the laws of the United States or any State thereof having a combined capital and surplus of at least \$100,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Indenture Trustee hereunder upon reasonable or customary terms. In case the Indenture Trustee shall cease to be eligible in accordance with the provisions of this clause (d), the Indenture Trustee shall resign immediately in the manner and with the effect specified in clause (a).

For purposes of the foregoing, so long as (i) an absolute and unconditional parent guarantee of the corporate parent of the Indenture Trustee substantially in the form of Exhibit P to the Participation Agreement shall be in full force and effect with respect to all obligations of the Indenture Trustee under this Indenture and the other Operative Agreements and (ii) an opinion in scope, form and substance reasonably satisfactory to the beneficiaries of such parent guarantee shall have been provided by counsel for the corporate parent of the Indenture Trustee (which counsel shall be satisfactory to the Loan Participants) on the date of execution and delivery of the parent guarantee referred to in clause (i) above, the "*capital and surplus*" requirement set forth above with respect to the Indenture Trustee shall be satisfied if the tangible net worth of such corporate parent is at least \$100,000,000.

(e) Any corporation into which the Indenture Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Indenture Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of paragraph (d) of this Section, be the Indenture Trustee under this Indenture without further act.

#### SECTION 8. SUPPLEMENTS AND AMENDMENTS.

*Section 8.1. Supplemental Indentures without Consent of Holders.* (a) The Owner Trustee and the Indenture Trustee, at any time and from time to time, without notice to or the consent of any holders of any Equipment Notes, may enter into one or more indentures supplemental hereto for any of the following purposes:

(i) to correct or amplify the description of any property at any time subject to the Lien of this Indenture or better to assure, convey and confirm unto the Indenture Trustee any property subject or required to be subject to the Lien of this Indenture or to subject to the Lien of this Indenture any Unit or Units substituted for any Unit or Units in accordance with the Lease; *provided, however,* that indenture supplements entered into for the purpose of subjecting to the Lien of this Indenture any Unit or Units substituted for any in accordance with the Lease need only be executed by the Owner Trustee; or

(ii) to evidence the succession of another trustee to the Owner Trustee and the assumption by any such successor of the covenants of the Owner Trustee herein and in the Equipment Notes contained, or to evidence (in accordance with Section 7) the succession of a new Indenture Trustee hereunder; or

(iii) to add to the covenants of the Owner Trustee, for the benefit of the holders of the Equipment Notes, or to surrender any right or power herein conferred upon the Owner Trustee; or

(iv) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising hereunder so long as

any such action does not adversely affect the interests of the holders of the Equipment Notes.

(b) *Supplemental Indentures with Consent of Holders of the Equipment Notes.* With the written consent of the holders of 66-2/3% in principal amount of the Equipment Notes outstanding, the Owner Trustee (but only on the written request of the Owner Participant) may, and the Indenture Trustee, subject to Section 8.2 hereof, shall, at any time and from time to time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights and obligations of holders of the Equipment Notes and of the Owner Trustee under this Indenture; *provided, however,* without the consent of each holder of an Equipment Note, no such supplemental indenture shall:

(1) change the final maturity of the principal of any Equipment Note, or change the dates or amounts of payment of any installment of the principal of, premium, if any, or interest on any Equipment Note, or reduce the principal amount thereof or the premium, if any, or interest thereon, or change to a location outside the United States the place of payment where, or the coin or currency in which, any Equipment Note or the premium, if any, or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment of principal or premium, if any, or interest on or after the date such principal or premium, if any, or interest becomes due and payable; or

(2) create any Lien with respect to the Indenture Estate, or deprive any holder of a Equipment Note of the benefit of the Lien on the Indenture Estate created by this Indenture; or

(3) reduce the percentage in principal amount of the Equipment Notes, the consent of whose holders is required for any such supplemental indenture, or the consent of whose holders is required for any waiver of compliance with certain provisions of this Indenture, or of certain defaults hereunder and their consequences provided for in this Indenture; or

(4) modify any provisions of this Section 8.1(b), except to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the holder of each Equipment Note affected thereby.

*Section 8.2. Indenture Trustee Protected.* If in the opinion of the Indenture Trustee any document required to be executed pursuant to the terms of Section 8.1 adversely affects any right, duty, immunity or indemnity in favor of the Indenture Trustee under this Indenture, the Participation Agreement or the Lease, the Indenture Trustee may in its discretion decline to execute such document.

*Section 8.3. Request of Substance, Not Form.* It shall not be necessary for the consent of the holders of Equipment Notes under Section 8.1(b) to approve the particular

form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

*Section 8.4. Documents Mailed to Holders.* Promptly after the execution by the Indenture Trustee of any document entered into pursuant to Section 8.1(b), the Indenture Trustee shall mail, by first-class mail, postage prepaid, a conformed copy thereof to each holder of an Equipment Note at its address set forth in the Register, but the failure of the Indenture Trustee to mail such conformed copies shall not impair or affect the validity of such document.

*Section 8.5. Documents to be Given to Indenture Trustee.* The Indenture Trustee, subject to the provisions of Section 5.1 and Section 5.2, may receive an Officer's Certificate and an opinion of counsel as conclusive evidence that any such supplemental indenture complies with the applicable provisions of this Indenture.

#### SECTION 9. MISCELLANEOUS.

*Section 9.1. Termination of Indenture.* (a) With respect to each Unit, this Indenture and the trusts created hereby shall terminate and this Indenture shall be of no further force or effect upon the earliest to occur of (i) the cancellation of the Lease with respect to such Unit pursuant to Section 11 thereof and upon payment in full to the Indenture Trustee of the amounts required to be paid pursuant to Section 2.9(b) in respect of such Unit, and (ii) the payment in full of the principal amount of, premium, if any, and interest on all Equipment Notes outstanding hereunder and all other sums payable to the Indenture Trustee and the holders of the Equipment Notes hereunder and under such Equipment Notes and under the Participation Agreement.

(b) At any time and from time to time prior to the expiration of the Lease Term, any Unit for which the provisions of Section 11.4(a) of the Lease has been satisfied may be disposed of in accordance with the provisions of Section 11.4(a) of the Lease, and the Owner Trustee shall, from time to time, direct the Indenture Trustee to, provided no Lease Event of Default shall have occurred and be continuing, execute and deliver to it, or as directed in writing by the Owner Trustee, an appropriate instrument furnished by the Owner Trustee or the Lessee releasing such Unit from the Lien of this Indenture, but only in respect of such Unit.

*Section 9.2. No Legal Title to Indenture Estate in Holders.* No holder of an Equipment Note shall have legal title to any part of the Indenture Estate. No transfer, by operation of law or otherwise, of any Equipment Note or other right, title or interest of any holder of an Equipment Note in and to the Indenture Estate or hereunder shall operate to terminate this Indenture or the trusts hereunder or entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Indenture Estate.

*Section 9.3. Sale of Equipment by Indenture Trustee is Binding.* Any sale or other conveyance of the Equipment by the Indenture Trustee made pursuant to the terms of this



Indenture or the Lease shall bind the holders of the Equipment Notes, the Owner Trustee and the Owner Participant and shall be effective to transfer or convey all right, title and interest of the Indenture Trustee, the Owner Trustee, the Owner Participant and such holders of the Equipment Notes in and to the Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Indenture Trustee.

*Section 9.4. Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by facsimile transmission, upon transmission thereof, provided such transmission is promptly confirmed by the methods set forth in clauses (a) or (b) above, in each case addressed to the following Person at its respective address set forth below or at such other address as such Person may from time to time designate by written notice to the other Persons listed below:

If to the Lessee:

Southern Pacific Transportation Company  
Southern Pacific Building, Room 666  
One Market Plaza  
San Francisco, California 94105  
Attention: Vice President-Finance  
Telecopy Number: (415) 541-2932  
Confirmation No.: (415) 541-2589

If to the Owner Trustee:

Shawmut Bank Connecticut, National  
Association  
777 Main Street  
Hartford, Connecticut 06115  
Attention: Corporate Trust Administration  
(SPTC Trust No. 1994-1)  
Southern Pacific Transportation Company  
Telecopy Number: (203) 240-7920  
Confirmation No.: (203) 986-7957

with copies to the Owner Participant  
(receipt of such copy, however, is not  
notice to the Owner Participant in such  
capacity)

If to the Owner Participant:

To the address set forth in Section 10.3 of  
the Participation Agreement

If to the Indenture Trustee:

State Street Bank and Trust Company of  
Connecticut, National Association

750 Main Street, Suite 1114  
Hartford, Connecticut 06103  
Attention: Corporate Trust Department  
Telecopy Number: (203) 244-1899  
Confirmation No.: (203) 244-1800

If to a holder of the Equipment Notes: At its address set forth in the Register.

*Section 9.5. Severability.* Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event of any inconsistency or conflict between any provision of this Indenture and any provision of the Trust Agreement, such provision in this Indenture shall govern and control.

*Section 9.6. Separate Counterparts.* This Indenture may be executed in any number of counterparts, each of such counterparts constituting an original, but all of such counterparts together only one Indenture.

*Section 9.7. Successors and Assigns.* All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Owner Trustee and its successors and permitted assigns, the Owner Participant and its successors and permitted assigns, and the Indenture Trustee and its successors and permitted assigns, and each holder of an Equipment Note, all as herein provided. Any request, notice, direction, consent, waiver or other instrument or action by any holder of an Equipment Note shall bind the successors and assigns of such holder.


*Section 9.8. Headings.* The headings of the various Sections hereof and the Table of Contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

*Section 9.9. Governing Law.* THIS INDENTURE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

*Section 9.10. No Recourse to the Owner Trustee.* It is expressly understood and agreed that all agreements and obligations of the Owner Trustee hereunder and under the Equipment Notes shall be binding upon the Owner Trustee, only in its capacity as Owner Trustee under the Trust Agreement, and the Owner Trustee shall not be liable in its individual capacity for the failure to make any payment on the Equipment Notes or for any breach thereof, except for its gross negligence or willful misconduct, or for breach of its covenants, representations and warranties contained herein, or except to the extent covenanted or made in its individual capacity.

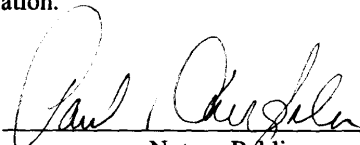
IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

SHAWMUT BANK CONNECTICUT, NATIONAL  
ASSOCIATION, not in its individual  
capacity except as otherwise expressly  
provided but solely as Owner Trustee

By   
Name: Alan B. Coffey  
Title: Assistant Vice President

STATE OF NEW YORK           )  
                                      )     SS  
COUNTY OF NEW YORK       )

On this 27<sup>th</sup> day of January 1994, before me personally appeared Alan B. Coffey, to me personally known, who being by me duly sworn, say that he is an Assistant Vice President of SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, that said instrument was signed on such date on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

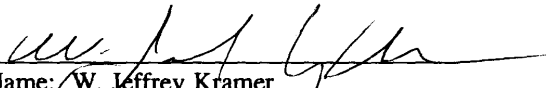
  
Notary Public

[NOTARIAL SEAL]

My commission expires:


PAUL V. COUGHLIN  
NOTARY PUBLIC, State of New York  
No. 60-0100500546  
Qualified in New York County  
Certificate filed in Westchester County  
Commission Expires Sept. 8, 1994

STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, NATIONAL  
ASSOCIATION, as Indenture Trustee

By   
Name: W. Jeffrey Kramer  
Title: Assistant Vice President

STATE OF NEW YORK           )  
                                          )     SS  
COUNTY OF NEW YORK       )

On this 27<sup>th</sup> day of January, 1994, before me personally appeared W. Jeffrey Kramer, to me personally known, who being by me duly sworn, say that he is an Assistant Vice President of STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, that said instrument was signed on such date on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[NOTARIAL SEAL]

My commission expires:

PAUL V. COUGHLIN  
NOTARY PUBLIC, State of New York  
No. 60-010050540  
Qualified in New York County  
Certificate filed in Westchester County  
Commission Expires Sept. 8, 1997

SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION,  
not in its individual capacity but solely as Owner Trustee

7.09% Equipment Note  
Due July 2, 2011

No \_\_\_\_\_

PPN No. 82048@ AF 7

\$ \_\_\_\_\_

SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity, but solely as owner trustee (the "*Owner Trustee*") under the Trust Agreement (SPTC Trust No. 1994-1) dated as of January 15, 1994 (the "*Trust Agreement*"), between the Owner Trustee in its individual capacity and the institution referred to therein as the "*Owner Participant*", hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \$\_\_\_\_\_, in lawful currency of the United States of America, in installments payable on the dates set forth in Schedule 1 hereto, commencing July 2, 1995 and thereafter to and including July 2, 2011, each such installment to be in an amount equal to the corresponding percentage (if any) of the principal amount hereof set forth in Schedule 1 hereto, together with interest thereon on the amount of such principal amount remaining unpaid from time to time from and including the date hereof until such principal amount shall be due and payable, payable on July 2, 1994 and on each January 2 and July 2 thereafter to the maturity date hereof at the rate of 7.09% per annum (computed on the basis of a 360-day year of twelve 30-day months). Interest on any overdue principal and (to the extent legally enforceable) on overdue interest shall be paid from the due date thereof at the Late Rate, payable on demand.

All payments of principal and interest and premium, if any, to be made hereunder and under the Trust Indenture and Security Agreement (SPTC Trust No. 1994-1) dated as of January 15, 1994 (the "*Indenture*", the defined terms therein not otherwise defined herein being used herein with the same meanings), between the Owner Trustee and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee thereunder for the holder of this Equipment Note and the holders of other Equipment Notes outstanding thereunder (herein in such capacity called the "*Indenture Trustee*") shall be made only from the income and proceeds from the Indenture Estate and only to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 of the Indenture. Each holder hereof, by its acceptance of this Equipment Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof as provided in the Indenture and that none of the Owner Trustee, the Owner Participant, the Indenture Trustee or their permitted successors and assigns is or shall be personally liable to the holder hereof for any amount payable under this Equipment Note or the Indenture or, except as expressly provided in the Participation Agreement or the Indenture, for any liability under the Participation Agreement or (in the case of the Owner Trustee or the Indenture Trustee) the Indenture.

EXHIBIT A  
(to Trust Indenture and Security Agreement)

Payments with respect to the principal amount hereof, premium, if any, and interest thereon shall be payable in U.S. dollars in immediately available funds at the principal office of the Indenture Trustee, or as otherwise provided in the Indenture. Each such payment shall be made on the date such payment is due and without any presentment or surrender of this Equipment Note. Whenever the date scheduled for any payment to be made hereunder or under the Indenture shall not be a Business Day, then such payment need not be made on such scheduled date but may be made on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (provided such payment is made on such next succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

Each holder hereof, by its acceptance of this Equipment Note, agrees that each payment received by it hereunder shall be applied, *first*, to the payment of accrued but unpaid interest on this Equipment Note then due, *second*, to the payment of the unpaid principal amount of this Equipment Note then due, *third*, to the payment of any premium then due, and *fourth*, to the payment of the remaining outstanding principal amount of this Equipment Note; *provided*, that the Owner Trustee may only prepay this Equipment Note as provided in Sections 2.9, 3.2 and 3.3 of the Indenture.

This Equipment Note is one of the Equipment Notes referred to in the Indenture which have been or are to be issued by the Owner Trustee pursuant to the terms of the Indenture. The Indenture Estate is held by the Indenture Trustee as security for the Equipment Notes. Reference is hereby made to the Indenture for a statement of the rights of the holder of, and the nature and extent of the security for, this Equipment Note, as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions in the Indenture each holder hereof agrees by its acceptance of this Equipment Note.

This Equipment Note is not subject to redemption or prepayment except as provided in Sections 2.9, 3.2 and 3.3 of the Indenture. This Equipment Note is subject to purchase by the Owner Trustee with or without a premium as provided in Section 4.4(b) of the Indenture. The holder hereof, by its acceptance of this Equipment Note, agrees to be bound by said provisions.

This Equipment Note is a registered Equipment Note and is transferable, as provided in the Indenture, only upon surrender of this Equipment Note for registration of transfer duly endorsed by, or accompanied by a written statement of transfer duly executed by, the registered holder hereof or his attorney duly authorized in writing. Prior to the due presentation for registration of transfer of this Equipment Note, the Owner Trustee and the Indenture Trustee may deem and treat the registered holder of this Equipment Note as the absolute owner and holder hereof for the purpose of receiving payment of all amounts payable with respect hereto and for all other purposes and shall not be affected by any notice to the contrary.

THIS EQUIPMENT NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED IN VIOLATION OF SUCH ACT. THIS EQUIPMENT NOTE IS SUBJECT TO CERTAIN ADDITIONAL RESTRICTIONS ON TRANSFER ARISING OUT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED. THESE RESTRICTIONS ARE SET FORTH IN SECTION 3.5(B) OF THE PARTICIPATION AGREEMENT REFERRED TO HEREIN AND ANY TRANSFEREE OF THIS EQUIPMENT NOTE SHALL BE DEEMED TO HAVE MADE THE REPRESENTATIONS, WARRANTIES AND COVENANTS REFERRED TO THEREIN AS A CONDITION TO SUCH TRANSFER. THIS EQUIPMENT NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Unless the certificate of authentication hereon has been executed by or on behalf of the Indenture Trustee, this Equipment Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Owner Trustee has caused this Equipment Note to be executed by one of its authorized signatories as of the date hereof.

SHAWMUT BANK CONNECTICUT, NATIONAL  
ASSOCIATION, not in its individual  
capacity, but solely as Owner Trustee

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[FORM OF INDENTURE TRUSTEE'S CERTIFICATE  
OF AUTHENTICATION]

This is one of the Equipment Notes referred to in the within-mentioned Indenture.

STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, NATIONAL  
ASSOCIATION, as Indenture Trustee

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AMORTIZATION SCHEDULE  
(Based on Percentage of Original Principal Amount)

<u>Date</u>	<u>Principal</u>	<u>Balance</u>
		100.0000%
Jul 2 1995	4.2821%	95.7179%
Jan 2 1996	0.0000%	95.7179%
Jul 2 1996	4.5858%	91.1321%
Jan 2 1997	0.0000%	91.1321%
Jul 2 1997	4.9109%	86.2212%
Jan 2 1998	0.0000%	86.2212%
Jul 2 1998	0.0000%	86.2212%
Jan 2 1999	0.0000%	86.2212%
Jul 2 1999	0.0000%	86.2212%
Jan 2 2000	0.0000%	86.2212%
Jul 2 2000	2.4171%	83.8041%
Jan 2 2001	0.0000%	83.8041%
Jul 2 2001	5.4304%	78.3737%
Jan 2 2002	6.0292%	72.3445%
Jul 2 2002	0.0000%	72.3445%
Jan 2 2003	6.4724%	65.8722%
Jul 2 2003	0.0000%	65.8722%
Jan 2 2004	9.5681%	56.3040%
Jul 2 2004	0.0000%	56.3040%
Jan 2 2005	10.2715%	46.0326%
Jul 2 2005	0.0000%	46.0326%
Jan 2 2006	11.0265%	35.0061%
Jul 2 2006	0.0000%	35.0061%
Jan 2 2007	0.0000%	35.0061%
Jul 2 2007	0.0000%	35.0061%
Jan 2 2008	0.0000%	35.0061%
Jul 2 2008	0.0000%	35.0061%
Jan 2 2009	4.2779%	30.7283%
Jul 2 2009	0.0000%	30.7283%
Jan 2 2010	9.7410%	20.9873%
Jul 2 2010	0.0000%	20.9873%
Jan 2 2011	10.4316%	10.5556%
Jul 2 2011	10.5556%	0.0000%

SCHEDULE 1  
(to 7.09% Equipment Note)



**TRUST INDENTURE SUPPLEMENT NO. \_\_\_\_**  
**(SPTC TRUST NO. 1994-1)**

THIS TRUST INDENTURE SUPPLEMENT NO. \_\_\_\_ (SPTC Trust No. 1994-1), dated \_\_\_\_\_ (this "*Indenture Supplement*"), of SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, a national banking association, not in its individual capacity but solely as trustee (the "*Owner Trustee*") under the Trust Agreement (SPTC Trust No. 1994-1) dated as of January 15, 1994 (the "*Trust Agreement*");

**WITNESSETH:**

WHEREAS, Trust Indenture and Security Agreement (SPTC Trust No. 1994-1) dated as of January 15, 1994 (the "*Indenture*"), between the Owner Trustee and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee (the "*Indenture Trustee*"), provides for the execution and delivery of Indenture Supplements thereto substantially in the form hereof which shall particularly describe the Equipment and shall specifically mortgage the Equipment to the Indenture Trustee; and

WHEREAS, the Indenture relates to the Equipment described on Schedule 1 attached hereto and made a part hereof;

NOW, THEREFORE, in order to secure the prompt payment of the principal of, and premium, if any, and interest on all of the Equipment Notes from time to time outstanding under the Indenture and the performance and observance by the Owner Trustee of all the agreements, covenants and provisions in the Indenture for the benefit of the holders of the Equipment Notes and in the Equipment Notes, subject to the terms and conditions of the Indenture, and in consideration of the premises and of the covenants contained in the Indenture and of the acceptance of the Equipment Notes by the holders thereof, and of the sum of \$1.00 paid to the Owner Trustee by the Indenture Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Owner Trustee (i) has sold, assigned, transferred, pledged and confirmed, and does hereby sell, assign, transfer, pledge and confirm, the property comprising the Equipment described on Schedule 1 attached hereto, and (ii) has sold, assigned, transferred and set over, all of the right, title and interest of the Owner Trustee under, in and to the Lease Supplement of even date herewith with respect to the Equipment described on Schedule 1 hereto (excluding, however, any rights to Excepted Property thereunder), to the Indenture Trustee, its successors and assigns, in the trust created by the Indenture for the benefit of the holders from time to time of the Equipment Notes.

To have and to hold all and singular the aforesaid property unto the Indenture Trustee, its successors and assigns, in trust for the benefit and security of the holders from time to time of the Equipment Notes and for the uses and purposes and subject to the terms and provisions set forth in the Indenture.

EXHIBIT B  
(to Trust Indenture and Security Agreement)

This Supplement shall be construed as supplemental to the Indenture and shall form a part of it, and the Indenture is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

This Supplement may be executed by the Owner Trustee in separate counterparts, each of which when so executed and delivered is an original, but all such counterparts shall together constitute but one and the same Supplement.

AND FURTHER, the Owner Trustee hereby acknowledges that the Equipment referred to in the attached Schedule 1 has been delivered to the Owner Trustee and is included in the property of the Owner Trustee covered by all the terms and conditions of the Trust Agreement, subject to the pledge or mortgage thereof under the Indenture.

IN WITNESS WHEREOF, the Owner Trustee has caused this Indenture Supplement to be duly executed by one of its duly authorized officers, as of the day and year first above written.

SHAWMUT BANK CONNECTICUT, NATIONAL  
ASSOCIATION, not in its individual  
capacity, but solely as Owner Trustee

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW YORK            )  
                                          )    SS  
COUNTY OF NEW YORK )

On this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, say that he is \_\_\_\_\_ of SHAWMUT BANK CONNECTICUT, NATIONAL ASSOCIATION, N.A., that said instrument was signed on such date on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

APPENDIX A  
Participation Agreement  
Equipment Lease Agreement  
Trust Indenture and Security Agreement

DEFINITIONS

General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require and such meanings shall be equally applicable to both the singular and the plural forms of the terms herein defined. In the case of any conflict between the provisions of this Appendix A and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, references (i) to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) to parties to agreements shall be deemed to include the permitted successors and assigns of such parties.

Defined Terms

"Additional Storage Period" shall have the meaning specified in Section 6.1(e) of the Lease.

"Advance" shall have the meaning specified in Section 3.5 of the Lease.

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the term "controlled" shall have a meaning correlative to the foregoing.

"After-Tax Basis" means with respect to any payment to be received by an Indemnified Person (which, for purposes of this definition, shall include any Tax Indemnitee and, for purposes of the Tax Indemnity Agreement, the Owner Participant (as defined therein)), the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments

the amount of all Taxes (net of any current credits, deductions or other Tax benefits arising from the payment by the Indemnified Person of any amount, including Taxes, for which the payment to be received is made) actually imposed currently on the Indemnified Person by any governmental authority or taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment to be received; provided, however, for the purposes of this definition, it shall be assumed that for the Owner Participant (or any Affiliate thereof) as an Indemnified Person, federal, state and local taxes are payable at the highest marginal federal, state and local statutory income tax rates applicable to corporations from time to time.

"All-in PV" shall mean the net present value (computed using a discount rate of 7.09%) of (i) the aggregate Basic Rent due and payable through and including the EBO Date (excluding any Basic Rent due on the EBO Date that is denominated as an advance Basic Rent payment) and (ii) the EBO Amount.

"Appraisal" shall have the meaning specified in Section 4.2(a) of the Participation Agreement.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, 11 U.S.C. § 101 et seq.

"Basic Rent" shall mean, with respect to any Unit of Equipment, all rent payable by the Lessee to the Lessor pursuant to Section 3.2 of the Lease for the Basic Term for such Unit, and all rent payable pursuant to Section 22.2 of the Lease for any Renewal Term for such Unit.

"Basic Term" shall have the meaning specified in Section 3.1 of the Lease.

"Basic Term Commencement Date" shall mean July 2, 1994.

"Basic Term Expiration Date", shall mean the date which is eighteen years after the Basic Term Commencement Date.

"Beneficial Interest" shall mean the interest of the Owner Participant under the Trust Agreement.

"Bill of Sale" shall mean a bill of sale, dated a Closing Date, or the date that any Replacement Unit is subjected to the Lease (and the Lien of the Indenture, if the Indenture has not been discharged pursuant to the terms thereof), from the Manufacturer (or the Lessee, in the case of a Replacement Unit) to the Owner Trustee covering the Units delivered on such Closing Date or such Replacement Unit, as the case may be, substantially in the form of Exhibit D-1 to the Participation Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, San Francisco, California, Boston, Massachusetts, the city and state (if different from the foregoing) in which the principal corporate trust office of the Owner Trustee is located, or, until the Lien of the Indenture has been discharged pursuant to the terms thereof, the city and state (if different from the foregoing) in which the principal corporate trust office of the Indenture Trustee is located.

"Certificate of Acceptance" shall have the meaning specified in Section 2.3(b) of the Participation Agreement.

"Change in Tax Law" shall mean, with respect to the Equipment delivered on a given Closing Date, a change, amendment, modification, addition or deletion (whether proposed, temporary or final) in or to the Code, any regulation thereunder or any revenue ruling, revenue procedure or other published administrative determination, or a decision of any court, in each case after the execution and delivery of the Participation Agreement.

"Claims" shall have the meaning specified in Section 7.2(a) of the Participation Agreement.

"Class I Railroad" shall mean a "Class I Carrier" within the meaning of 49 C.F.R. Part 1201 which is a railroad operating within the jurisdiction of the Interstate Commerce Commission pursuant to Title 49 of the U.S. Code.

"Closing" shall have the meaning specified in Section 2.3(a) of the Participation Agreement.

"Closing Date" shall have the meaning specified in Section 2.3(a) of the Participation Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Commitment", with respect to the Owner Participant, shall have the meaning specified in Section 2.2(a) of the Participation Agreement and with respect to each Loan Participant, shall have the meaning specified in Section 2.2(b) of the Participation Agreement.

"Debt Amortization" with respect to any Equipment Note shall mean the amortization schedule of principal payments applicable thereto.

"Debt Rate" shall mean as of the date of determination, a rate equal to the scheduled rate of interest per annum borne by

the Equipment Notes then outstanding (computed on the basis of a year of 360 days consisting of twelve 30-day months).

"Determination Date" shall mean the 2nd day of any calendar month.

"DOT" shall have the meaning specified in Section 8.1 of the Lease.

"EBO Amount" shall mean, with respect to any Unit as of the EBO Date, the amount applicable to such Unit set forth in Schedule 6 to the Participation Agreement.

"EBO Date" shall mean January 2, 2008.

"Environmental Laws" shall mean any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any governmental authority regulating, relating to or imposing liability standards of conduct concerning pollution or protection of human health or the environment, as now or may at any time hereafter be in effect, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Solid Waste Disposal Act, the Clean Air Act, the Clean Water Act, the Superfund Amendments and Reauthorization Act of 1986, the Emergency Planning and Community-Right-to-Know Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Endangered Species Act, the Toxic Substances Control Act and the Occupational Safety and Health Act, together, in each case, with each amendment, supplement or other modification thereto, and the regulations promulgated thereunder and all substitutions therefor.

"Equipment" shall mean collectively those double stack container cars described in the Lease Supplements and the Indenture Supplements, together with the Wheels and any and all appliances, parts, instruments, accessories, furnishings, other equipment, accessions, additions, improvements, substitutions and replacements from time to time incorporated or installed in any item thereof and any and all appliances, parts, instruments, accessories, furnishings and other equipment which remain the property of the Owner Trustee after removal pursuant to the terms of the Lease.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor specified on Schedule 1 to the Participation Agreement.

"Equipment Notes" shall mean the Equipment Notes, each to be substantially in the form therefor set forth in Exhibit A to the Indenture, issued by the Owner Trustee pursuant to Section 2.1 of the Indenture, and authenticated by the Indenture Trustee, in principal amounts and bearing interest at the rates and payable as provided in Section 2.1 of the Indenture and secured

as provided in the Granting Clause of the Indenture, and shall include any Equipment Notes issued in exchange therefor or replacement thereof pursuant to Section 2.6 or 2.7 of the Indenture.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Event of Default" shall mean a Lease Event of Default.

"Event of Loss" shall have the meaning specified in Section 11.1 of the Lease.

"Excepted Property" shall mean (i) all indemnity payments or other payments (including, without limitation, payments pursuant to Section 7 of the Participation Agreement or payments under the Tax Indemnity Agreement, payments under Section 17 of the Lease and any corresponding payments under Section 3.3 of the Lease) to which the Owner Participant, the Owner Trustee in its individual capacity or any of their respective successors, Affiliates, permitted assigns, directors, officers, employees, servants and agents is entitled pursuant to the Operative Agreements, (ii) any insurance proceeds payable under insurance maintained by the Owner Trustee in its individual capacity or the Owner Participant pursuant to Section 12.3 of the Lease, (iii) any insurance proceeds (or governmental payments in lieu thereof) payable to the Owner Trustee in its individual capacity or to the Owner Participant under any public liability insurance maintained by the Lessee pursuant to Section 12 of the Lease or by any other Person, (iv) any amount payable to the Owner Participant by any Transferee as the purchase price of the Beneficial Interest in compliance with the terms of the Participation Agreement and the Trust Agreement, (v) any rights of the Owner Participant or the Owner Trustee in its individual capacity to demand, collect, sue for, or otherwise receive and enforce payment of the amounts described in the foregoing clauses (i) through (v), and (vi) the respective rights of the Owner Trustee in its individual capacity or the Owner Participant to the proceeds of the foregoing.

"Fair Market Renewal Term" shall have the meaning specified in Section 22.2(b) of the Lease.

"Fair Market Rental Value" or "Fair Market Sales Value", with respect to any Unit shall mean the cash rent or cash price obtainable for such Unit in an arm's-length lease or sale between an informed and willing lessee or purchaser under no compulsion to lease or purchase, as the case may be, and an informed and willing lessor or seller, under no compulsion to lease or sell, as the case may be. In making such determination, costs of removal from the location of current use shall not be a deduction from such rent or purchase price and it shall be assumed that the Units have been collected in one place on the



lines of the Lessee as directed by the Lessor. Fair Market Rental Value or Fair Market Sales Value of any Unit shall be determined, except as otherwise provided in any Operative Agreement, on the assumption that such Unit is in the condition and state of repair required under Section 8.1 of the Lease and that Lessee is in compliance with the Lease and the other Operative Agreements. If the parties are unable to agree upon a Fair Market Rental Value and/or a Fair Market Sales Value within 30 days after delivery of the appropriate notice pursuant to Section 22 of the Lease or if Fair Market Rental Value or Fair Market Sales Value are to be determined for the purposes of Section 15 of the Lease, such values shall be determined by the following appraisal procedure. Determinations under this appraisal procedure shall be conclusively binding on both the Lessor and the Lessee. If either the Owner Participant or the Lessee shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, such parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 Business Days after such notice is given, each such party shall appoint an independent appraiser within 20 Business Days after such notice is given, and the two appraisers so appointed shall within 15 Business Days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 Business Days after such notice is given, either such party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, of the Units then to be appraised, within 30 days after his or their appointment. If such parties shall have appointed a single appraiser or if either such party shall have failed to appoint an appraiser, the determination of Fair Market Rental Value or Fair Market Sales Value, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding as the Fair Market Rental Value or Fair Market Sales Value, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental Value or Fair Market Sales Value, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party to the Lease hereby consents and agrees not to assert any judicial or other procedures. If a mutually acceptable appraiser is selected, Lessor and Lessee shall each bear one half of the cost thereof. If three appraisers are selected as provided above, the Lessee

shall bear the cost of the appraiser selected by Lessee, the Lessor shall bear the cost of the appraiser selected by Lessor and the Lessee and the Lessor shall equally share the cost of the third appraiser. If such appraisal is in connection with the exercise of remedies set forth in Section 15 of the Lease, the Lessee shall pay the costs of such appraisal. Notwithstanding any of the foregoing, for the purposes of Section 15 of the Lease, the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, shall be zero with respect to any Unit if the Lessor theretofore has not been able to recover possession of such Unit in accordance with the terms of paragraph (b) of Section 15.1 of the Lease.

"Fixed Rate Renewal Term" shall have the meaning specified in Section 22.2(a) of the Lease.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Hazardous Substances" shall mean any hazardous or toxic substances, wastes, materials or chemicals, petroleum (including crude oil or any fraction thereof), and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, pollutants, contaminants, and any other materials and substances regulated pursuant to, or which may give rise to liability under, Environmental Law.

"ICC" shall mean the Interstate Commerce Commission or any successor thereto.

"Indemnified Person" shall have the meaning specified in Section 7.2(b) of the Participation Agreement.

"Indenture" or "Trust Indenture" shall mean the Trust Indenture and Security Agreement (SPTC Trust No. 1994-1), dated as of January 15, 1994 between the Owner Trustee, in the capacities described therein, and the Indenture Trustee, as amended, supplemented or otherwise modified from time to time, including supplementation by each Indenture Supplement pursuant thereto.

"Indenture Default" shall mean an Indenture Event of Default or an event which with notice or the lapse of time or both would become an Indenture Event of Default.

"Indenture Estate" shall have the meaning specified in the Granting Clause of the Indenture.

"Indenture Event of Default" shall have the meaning specified in Section 4.1 of the Indenture.

"Indenture Supplement" shall mean an Indenture Supplement (SPTC Trust No. 1994-1) dated a Closing Date or the date that any Replacement Unit is subjected to the Lien and security interest of the Indenture, substantially in the form of Exhibit B to the Indenture, of the Owner Trustee, in the capacities described therein, covering the Units related to such Closing Date or such Replacement Unit, as the case may be.

"Indenture Trustee" shall mean State Street Bank and Trust Company of Connecticut, National Association, a national banking association, as a trustee under the Indenture and its successors thereunder.

"Indenture Trustee Agreements" shall mean the Operative Agreements to which the Indenture Trustee is or will be a party.

"Indenture Trustee Parent Guaranty" shall mean the Guaranty (SPTC Trust No. 1994-1), dated as of January 15, 1994, by State Street Bank and Trust Company, substantially in the form of Exhibit P to the Participation Agreement.

"Interchange Rules" shall mean the interchange rules or supplements thereto of the Mechanical Division of the Association of American Railroads, as the same may be in effect from time to time.

"Interim Interest" shall have the meaning specified in Section 2.2(c) of the Participation Agreement.

"Interim Security Agreement" shall mean (a) with respect to the Units delivered on the first Closing Date, the letter agreement dated September 22, 1993, between the Manufacturer and the Lessee, and the related Memorandum of Security Agreement dated as of September 23, 1993, between the Manufacturer and the Lessee and (b) with respect to the Units delivered on any other Closing Date, any agreement between the Lessee and the Manufacturer that creates or purports to create in favor of the Manufacturer a security interest in such Units.

"Interim Security Agreement Termination" shall mean an interim security agreement termination, dated a Closing Date, terminating the Interim Security Agreement with respect to the Units delivered on such Closing Date, substantially in the form of Exhibit D-3 to the Participation Agreement.

"Interim Term" shall have the meaning specified in Section 3.1 of the Lease.

"Investment Banker" shall mean an independent investment banking institution of national standing appointed by the Lessee.

"Late Rate" shall mean (i) with respect to the portion of any payment of Rent that would be required to be distributed

to the Loan Participants pursuant to the terms of the Indenture, the rate per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months) equal to the lesser of (a) the greater of (1) 1% over the Debt Rate and (2) 1% over the Prime Rate, and (b) the maximum interest rate from time to time permitted by law, and (ii) with respect to the portion of any payment of Rent that would be required to be distributed to the Lessor pursuant to the terms of the Indenture or would be payable directly to the Lessor, the Owner Participant or the Owner Trustee, in its individual capacity, the rate per annum (calculated on the basis of a 360-day year consisting of twelve 30-day months) equal to the lesser of (a) 2% over the Prime Rate and (b) the maximum interest rate from time to time permitted by law.

"Lease" or "Lease Agreement" or "Equipment Lease" shall mean the Equipment Lease Agreement (SPTC Trust No. 1994-1), relating to the Equipment, dated as of January 15, 1994 between the Owner Trustee, in the capacities described therein, as the Lessor, and the Lessee, as amended, supplemented or otherwise modified from time to time. Such terms shall include each Lease Supplement entered into pursuant to the terms of the Lease.

"Lease Default" shall mean a Lease Event of Default, an Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default.

"Lease Event of Default" and "Event of Default" shall have the meanings specified in Section 14 of the Lease.

"Lease Supplement" shall mean a Lease Supplement (SPTC Trust No. 1994-1), dated a Closing Date or the date that any Replacement Unit is subjected to the Lease, substantially in the form of Exhibit A to the Lease, between the Lessor and the Lessee, covering the Units related to such Closing Date or such Replacement Unit, as the case may be.

"Lease Term" shall mean, with respect to any Unit, the Interim Term applicable to such Unit, the Basic Term applicable to such Unit and any Renewal Term applicable to such Unit then in effect.

"Lessee" shall mean Southern Pacific Transportation Company, a Delaware corporation and any successor or assign permitted under Section 6.7 of the Participation Agreement.

"Lessee Agreements" shall mean the Operative Agreements to which Lessee is a party.

"Lessee Bill of Sale" shall mean a bill of sale, dated a Closing Date, from the Lessee to the Owner Trustee covering the Wheels and certain related components of the Units delivered on such Closing Date, substantially in the form of Exhibit D-4 to the Participation Agreement.

"Lessee Person" shall have the meaning specified in Section 18 of the Tax Indemnity Agreement.

"Lessor" shall have the meaning specified in the recitals to the Lease.

"Lessor's Liens" means any Lien affecting, on or in respect of the Equipment, the Lease or the Trust Estate arising as a result of (i) claims against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Operative Agreements, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Operative Agreements or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Trust Estate which are not indemnified against by the Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) by the Lessor or the Owner Participant (without the consent of the Lessee and the Indenture Trustee) of all or any portion of their respective interests in the Equipment, the Trust Estate or the Operative Agreements, other than a transfer pursuant to Section 10, 11, 15 or 22 of the Lease.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, lease, disposition of title or other charge of any kind on property.

"Loan Participants" shall mean and include each registered owner of an Equipment Note.

"Make-Whole Premium" shall mean an amount equal to the excess of (a) the aggregate present value as of the date of such prepayment of each dollar of principal of the Equipment Notes being paid or prepaid and the amount of interest (exclusive of interest accrued to the date of prepayment) that would have been payable in respect of such dollar if such prepayment had not been made, all determined by discounting such payments and prepayments at a rate which is equal to the Treasury Rate over (b) the aggregate principal amount of such Equipment Notes then to be paid or prepaid. To the extent that the Treasury Rate at the time of such payment is equal to or higher than 7.09%, the Make-Whole Premium is zero. For purposes of any determination of the Make-Whole Premium:

"Treasury Rate" shall mean at any time with respect to the Equipment Notes being prepaid (a) the sum of .50%, plus the yield reported on page "USD" of the Bloomberg Financial Markets Service (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading

in the United States government Securities) at 11:00 A.M. (New York, New York time) for those actively traded "On the Run" United States government Securities having a maturity (rounded to the nearest month) corresponding to the remaining Weighted Average Life to Maturity of the principal being prepaid or (b) in the event that no nationally recognized trading screen reporting on-line intraday trading in the United States government Securities is available, Treasury Rate shall mean the sum of .50%, plus the weekly average of the yield to maturity on the United States Treasury obligations with a constant maturity (as compiled by and published in the most recently published issue of the United States Federal Reserve Statistical Release designated H.15(519) or its successor publication) most nearly equal to (by rounding to the nearest month) the Weighted Average Life to Maturity of the Equipment Notes then being prepaid. If no maturity exactly corresponding to such Weighted Average Life to Maturity of such Equipment Notes shall appear therein, the weekly average yield for the two most closely corresponding published maturities shall be calculated pursuant to the foregoing sentence and the Treasury Rate shall be interpolated from such yields on a straight-line basis (rounding, in the case of relevant periods, to the nearest month).

"Weighted Average Life to Maturity" with respect to any Equipment Notes shall mean, as at the time of determination, the number of years obtained by dividing the then Remaining Dollar-years of such Equipment Notes by the sum of the remaining scheduled principal payments on such Equipment Notes. The term "Remaining Dollar-years" of the Equipment Notes means the product obtained by (a) multiplying (i) the amount of each then scheduled required principal payment (including payment at final maturity), by (ii) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity of the Equipment Notes and the date of such required payment is due, and (b) totalling all the products obtained in (a).

"Manufacturer" shall mean Gunderson, Inc., an Oregon corporation.

"Material Default" shall mean a Lease Default under Section 14(a), 14(b), 14(c), 14(d), 14(e), 14(g) or 14(h) of the Lease.

"Modification" shall have the meaning specified in Section 9.2 of the Lease.

"Net Economic Return" shall mean (a) the net after-tax yield and (b) total net after-tax cash flows ((i) preserving 100% of its anticipated annual net after-tax cash flow in each of the first five years following the first Closing Date and (ii)

preserving its anticipated annual net after-tax cash flows during the years after such five-year period within a range of 90% to 110% of the amounts originally anticipated for any such year in such period, so long as the anticipated total net after-tax cash flows are preserved for such period) expected by the original Owner Participant with respect to the Equipment, utilizing the multiple investment sinking fund method of analysis and the same assumptions as used by such Owner Participant (including the Tax Assumptions set forth in Section 2 of the Tax Indemnity Agreement) in making the original computations of Basic Rent, Stipulated Loss Value, Termination Value and EBO Amount initially set forth in Schedules 3, 4, 5 and 6 to the Participation Agreement.

"Non-Severable Modification" shall mean any Modification that is not readily removable without causing material damage to the Equipment or any Unit.

"Notice of Delivery" shall have the meaning specified in Section 2.3(a) of the Participation Agreement.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation, by the President, any Vice President, any Assistant Vice President, the Treasurer or an Assistant Treasurer, (ii) in the case of a partnership by the President, any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee of the Treasurer, any Vice President, any Trust Officer or any other officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Operative Agreements" shall mean the Participation Agreement, the Bills of Sale, the Lessee Bills of Sale, the Trust Agreement, the Equipment Notes, the Lease (including each Lease Supplement), the Indenture (including each Indenture Supplement), the Tax Indemnity Agreement, the Purchase Agreement Assignment, the Wheel Warranty Assignment, the Certificates of Acceptance and the Indenture Trustee Parent Guaranty.

"Optional Modification" shall have the meaning specified in Section 9.2 of the Lease.

"Owner Participant" shall mean PMCC Leasing Corporation, a Delaware corporation, and its permitted successors and assigns.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is or will be a party.

"Owner Trustee" shall mean Shawmut Bank Connecticut, National Association, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement and its successors thereunder.

"Owner Trustee Agreements" shall mean the Operative Agreements to which the Owner Trustee, either in its individual capacity or as Owner Trustee, is or will be a party.

"Participants" shall mean the Owner Participant and the Loan Participants.

"Participation Agreement" shall mean the Participation Agreement (SPTC Trust No. 1994-1), dated as of January 15, 1994, among the Lessee, the Owner Trustee, in the capacities described therein, the Owner Participant, the Loan Participants and the Indenture Trustee, in the capacities described therein, as amended, supplemented or modified from time to time.

"Permitted Investments" shall mean (i) direct obligations of the United States of America and agencies thereof for which the full faith and credit of the United States is pledged, (ii) obligations fully guaranteed by the United States of America, (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association (in each case excluding the Lessee and its Affiliates) incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$1,000,000,000 (including the Indenture Trustee and the Owner Trustee if such conditions are met) and having a rating assigned to the long-term unsecured debt of such institutions by Standard & Poor's Corporation and Moody's Investors Service, Inc. at least equal to AA and Aa2, respectively, and (iv) commercial paper of companies, banks, trust companies or national banking associations (in each case excluding the Lessee, the Owner Participant and their respective Affiliates) incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investors Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization; provided that if all of the above investments are unavailable, the entire amount to be invested may be used to purchase Federal Funds from an entity described in clause (iii) above; provided, further, that no investment shall be eligible as a "Permitted Investment" unless the final maturity or date of return of such investment is 90 days or less from the date of purchase thereof.

"Permitted Liens", with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of the Lessee



and the Owner Trustee under the Lease; (ii) the interest of the Lessee and any sublessee as provided in any sublease permitted pursuant to Section 8.3 of the Lease; (iii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture or loss of, or loss or interference with use or possession of, or diminution of value, utility or useful life of, any Unit or any interest therein, or any risk of interference with the payment of Rent, and such contest would not result in, or increase the risk of, the imposition of any criminal liability on any Indemnified Person; (iv) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of the Lessee's (or if a sublease permitted pursuant to Section 8.3 of the Lease is then in effect, any sublessee's) business securing obligations which are not due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture or loss of, or loss or any risk of interference with use or possession of, or diminution of value, utility or useful life of, any Unit or any interest therein, or interference with the payment of Rent, and such contest would not result in, or increase the risk of, the imposition of any criminal liability on any Indemnified Person; (v) the Lien and security interest granted to the Indenture Trustee under and pursuant to the Indenture, and the respective rights of the Loan Participants, the Indenture Trustee, the Owner Participant and the Owner Trustee under the Operative Agreements; (vi) Liens arising out of any judgment or award against the Lessee (or any sublessee permitted pursuant to Section 8.3 of the Lease) with respect to which an appeal or proceeding for review is being taken in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review so long as (a) there exists no material risk of sale, forfeiture or loss of, or loss or interference with the use or possession of, or diminution of value, utility or useful life of, any Unit or any interest therein, or any risk of interference with the payment of Rent, (b) such contest would not result in, or increase the risk of, the imposition of any criminal liability on any Indemnified Person and (c) adequate reserves with respect to the payment of such judgment or award are maintained in accordance with generally accepted accounting principles; and (vii) salvage rights of insurers under insurance policies maintained by the Lessee pursuant to Section 12 of the Lease.

"Permitted Sublease" shall have the meaning specified in Section 8.3(a) of the Lease.

"Permitted Sublessee" shall mean any sublessee of the Equipment under a Permitted Sublease.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Prime Rate" shall mean the rate announced from time to time by Citibank, N.A., in New York, as its "base rate".

"Purchase Agreement" shall have the meaning specified in the Purchase Agreement Assignment.

"Purchase Agreement Assignment" shall mean that certain Purchase Agreement Assignment (SPTC Trust No. 1994-1), dated as of January 15, 1994, between the Lessee and the Owner Trustee, as amended, supplemented or otherwise modified from time to time.

"Purchase Date" shall have the meaning specified in Section 4.4(b) of the Indenture.

"Refinancing Date" shall have the meaning set forth in Section 10.2 of the Participation Agreement.

"Register" shall have the meaning specified in Section 2.6 of the Indenture.

"Renewal Term" shall mean, with respect to any Unit, any term in respect of which the Lessee shall have exercised its option to renew the Lease for such Unit pursuant to Section 22.2 thereof, including any Fixed Rate Renewal Term or any Fair Market Renewal Term.

"Rent" shall mean all Basic Rent and Supplemental Rent.

"Rent Payment Date" or "Payment Date" shall mean each January 2 and July 2 of each year occurring during the Lease Terms commencing July 2, 1994, provided that if any such date shall not be a Business Day, then "Rent Payment Date" or "Payment Date" shall mean the next succeeding Business Day.

"Replacement Unit" shall mean a double stack container car, which shall meet the standards of Section 11.2(i) of the Lease and have been leased under the Lease pursuant to Section 11.4 of the Lease.

"Required Modification" shall have the meaning specified in Section 9.1 of the Lease.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Treasurer, Assistant Treasurer, Assistant Secretary or other officer, who, in each case, in the normal performance of his or her operational responsibility would have knowledge of such matters and the requirements with respect thereto.

"Scheduled Closing Date" shall have the meaning specified in Section 2.7(b) of the Participation Agreement.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Severable Modification" shall mean any Modification other than a Non-Severable Modification.

"Stipulated Loss Value", for any Unit as of any Determination Date, shall mean the amount determined by multiplying the Equipment Cost for such Unit by the percentage set forth in Schedule 4 to the Participation Agreement opposite the Determination Date on which such Stipulated Loss Value is being determined; provided that during any Renewal Term, "Stipulated Loss Value" shall be determined as provided in Section 22.5 of the Lease. Anything contained in the Lease or in the Participation Agreement to the contrary notwithstanding, Stipulated Loss Value for such Unit (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement or any deduction pursuant to Section 3.5 of the Lease), will, under any circumstances and in any event, be an amount which, together with any other amounts required to be paid by Lessee under the Lease in connection with such payment of Stipulated Loss Value, will be at least sufficient to pay in full, as of the date of payment thereof, the portion of the unpaid principal of the Equipment Notes which is related to such Unit, together with all unpaid interest accrued to the date on which such amount is paid in accordance with the terms thereof.

"Storage Period" shall have the meaning specified in Section 6.1(a) of the Lease.

"Subsidiary" of any Person shall mean any corporation, association, or other business entity of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee is obligated to pay under the Operative Agreements to or on behalf of any of the other parties thereto, including, without limitation, Termination Value, Stipulated Loss Value payments, the EBO Amount, any Make-Whole Premium and payments pursuant to Section 7 of the Participation Agreement, Sections 3.3 and 3.5 of the Lease and the Tax Indemnity Agreement.

"Taxes" shall have the meaning specified in Section 7.1(b) of the Participation Agreement.

"Tax Indemnitee" shall have the meaning specified in Section 7.1(a) of the Participation Agreement.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement (SPTC Trust No. 1994-1), dated as of January 15, 1994, between the Lessee and the Owner Participant, as amended, supplemented or otherwise modified from time to time.

"Terminated Units" shall have the meaning specified in Section 10.1 of the Lease.

"Termination Date" shall have the meaning specified in Section 10.1 of the Lease.

"Termination Value", for any Unit as of any date during the Basic Term, shall mean the amount determined by multiplying the Equipment Cost for such Unit by the percentage set forth in Schedule 5 to the Participation Agreement relating to such Unit (as said Schedule is from time to time in effect) opposite the Termination Date. Anything contained in the Lease or in the Participation Agreement to the contrary notwithstanding, Termination Value for such Unit (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement or any deduction pursuant to Section 3.5 of the Lease), will, under any circumstances and in any event, be an amount which, together with any other amounts required to be paid by Lessee under the Lease in connection with such payment of Termination Value, will be at least sufficient to pay in full as of the date of payment thereof the portion of the unpaid principal of the Equipment Notes which is related to such Unit, together with all unpaid interest accrued to the date on which such amount is paid in accordance with the terms thereof.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit.

"Transaction Costs" shall have the meaning specified in Section 2.5(a) of the Participation Agreement.

"Transferee" shall have the meaning specified in Section 6.1(a) of the Participation Agreement.

"Trust Agreement" shall mean that certain Trust Agreement (SPTC Trust No. 1994-1), dated as of January 15, 1994, between the Owner Participant and Shawmut Bank Connecticut, National Association, as amended, supplemented or otherwise modified from time to time.

"Trust Estate" shall have the meaning set forth in Section 2.2 of the Trust Agreement.

"Trustee" shall mean each of the Owner Trustee or the Indenture Trustee and "Trustees" shall mean the Owner Trustee and Indenture Trustee, collectively.

"Unit" shall mean each unit or item of Equipment.

"Wheels" shall mean the wheelsets, containing twenty-four wheels per wheelset, attached to the Units and as more particularly described in the Lessee Bills of Sale.

"Wheel Manufacturer" shall mean Griffin Wheel Company.

"Wheel Warranty Assignment" shall mean that certain Assignment and Consent Agreement (SPTC Trust No. 1994-1), dated as of January 15, 1994, between the Lessee and the Owner Trustee, as amended, supplemented or otherwise modified from time to time.